89-1086

Supreme Court, U.S.
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NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1989

SARAH KLUMPNER, a minor, by
RICHARD KAHN, her Guardian ad Litem,

Petitioner

V.

GEORGE H. KLUMPNER

Respondent

ON WRIT OF CERTIORARI FROM THE
ILLINOIS SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

DANIEL W. SCHERMER
Attorney for Petitioner
1600 Foshay Tower
Minneapolis, MN 55402
(612) 333-4690
Attorney Reg. No. 96556

68(9)

QUESTION PRESENTED FOR REVIEW

Whether the Illinois appellate courts violated the Full Faith and Credit clause of the United States Constitution by refusing to register a Minnesota money judgment rendered by a Minnesota court of general jurisdiction which had personal jurisdiction over the judgment debtor.

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SARAH KLUMPNER, a minor, by
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Petitioner

V.

GEORGE H. KLUMPNER

Respondent

PETITION FOR WRIT OF CERTIORARI

Sarah Klumpner, a minor, by Richard Kahn, her guardian ad litem, petitions for a writ of certiorari to review the judgment of the Illinois Supreme Court.

OPINIONS BELOW

Petitioner's Minnesota judgment was registered and docketed in the Cook County,

Illinois Circuit Court on April 9, 1986.

On June 4, 1987, the Cook County, Illinois, Circuit Court denied the respondent's motion to vacate the registration of the judgment. The decision of the Cook County Circuit Court is not reported and is shown at Appendix A-4.

On March 31, 1989, the Appellate Court of Illinois, Fifth Division, reversed the decision of the Cook County Circuit Court, holding that petitioner's Minnesota money judgment could not be registered in Illinois. The decision of the Appellate Court of Illinois is reported at 182 Ill. App. 3rd 22 and 537 N.E.2d 914 (1988), and is shown at Appendix A-2.

On May 11, 1989, the Illinois Appellate Court denied a petition for rehearing. The order denying rehearing is shown at Appendix A-3.

On October 5, 1987, the Illinois Supreme Court denied a Petition for Leave to Appeal. The order is not reported and is shown at Appendix A-1.

JURISDICTION

Sarah Klumpner, a minor, by Richard Kahn, her guardian ad litem, petitions for a writ of certiorari to review the judgment of the Illinois Supreme Court denying registration in Illinois of a money judgment rendered in a tort action against the respondent by a Minnesota court of competent and general jurisdiction. It is the contention of the Petitioner that the decision of the Illinois Supreme Court violated the Full Faith and Credit clause of the United States Constitution.

The order and opinion of the Illinois Appellate Court in favor of the respondent was entered on March 31, 1989. A Petition

for Leave to Appeal to the Illinois Supreme Court was denied on October 5, 1989. Jurisdiction of this Court rests on 28 U.S.C., Section 1257(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Article IV, Section 1 of the United States Constitution provides that:

> Full Faith and Credit shall be given in each state to the Public Acts, Record, and Judicial Proceeding of every other state and the Congress may by general laws prescribe the Manner in which such Acts, Records, and Proceedings shall be proved, and the Effect thereof.

2. Title 28, United States Code, Section 1738, provides in pertinent part as follows:

> The records and judicial proceedings of any court of any...State, territory or Possession, or copies thereof...shall have the same full faith and credit in every court within the United States and its Territories and

> Possessions as they have by law or usage in the courts of such State, Territory, or Possession from which they are taken.

3. Section 260.111 of the Minnesota Statutes provides in pertinent part that:

> ...the juvenile court has original and exclusive jurisdiction in proceedings concerning any child who is alleged to be...neglected...or dependent....

4. Section 484.01 of the Minnesota Statutes provides that:

> The district courts shall have original jurisdiction in all civil cases within their respective districts....

5. Chapter 40, paragraph 2108(a) of the Illinois Statutes reads as follows:

> (a) A court which has jurisdiction under this Act to make an initial or modification judgment may decline to exercise its jurisdiction any time before making a judgment if it finds that it is an inconvenient forum to make a custody determination under the circumstances of the case and that a court of another state is a more appropriate forum.

STATEMENT OF THE CASE

This is a petition to review the Illinois Appellate Court's vacation of an Illinois foreign judgment registration of a $325,000 Minnesota tort money judgment awarded an infant plaintiff in a Minnesota action against her father for sexual abuse.

The sole question in this case is whether the Illinois courts are required by the Constitution to give full faith and credit to a money judgment rendered by a Minnesota court of general jurisdiction which had personal jurisdiction over the judgment debtor.[1]

The factual background to the case is as follows: Custody of the infant, Sarah, had been awarded to the mother, Judith, during

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[1]The defendant has not contended that the Minnesota court lacked personal jurisdiction over him, nor has he contended that there was fraud in the procurement of the judgment. Appendix A-4, pp. 47, 51-52.

the pendency of a Illinois divorce proceeding instituted by Judith in an Illinois Family Court while both she, and her husband, George, were Illinois residents.

In 1980, while the divorce proceedings were still pending in Illinois, the mother fled with the child to Minnesota in a good faith belief, as determined by the Illinois court that George would harm both her and the child. The mother and child then became Minnesota residents.

Supervisory restrictions which had been imposed on George's visitation rights by Judge Brady of the Lake County Illinois Circuit Court on September 26, 1980, were lifted by Judge Alfonse Witt of the same court on September 2, 1981. Following complaints of the infant that she had been sexually molested by George, observations of the mother to the same effect, and the

opinion of a treating Minnesota psychiatrist who was an expert in child abuse cases, the mother commenced a proceeding in the Minnesota Family Court in October 1981 for the elimination of George's visitation rights. On February 2, 1981, the Minnesota Family Court held that both it and the Illinois Family court had concurrent jurisdiction, but the mother was required to proceed in Illinois on the basis that the Illinois court had primary jurisdiction. See Appendix B-1. The mother's petition for appellate Minnesota review was denied.

On April 4, 1982, Judith moved the Illinois Family Court, Judge Witt presiding, for an order terminating George's visitation rights on the ground that he had sexually abused the infant, then three years of age, during a Minnesota visitation on September 7, 1981. Judge Witt denied a petition to

appoint a guardian ad litem for Sarah or to make her a party to the proceeding. See Appendix C-1, p. 74, no. 4.[2]

Following the taking of testimony in the matter, Judge Witt, in an open-end ruling held that "there is no credible evidence that George has ever physically or sexually abused Sarah." His ruling was affirmed by the Illinois Appellate Court on December 19, 1983, on the basis that Judge Witt was in a better position to determine the credibility of witnesses.

In October of 1982, following Judge Witt's ruling of October 20, 1982 and the child's report of additional abuse, a personal injury action against George for the

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[2]The record demonstrates that Mr. Gurewitz, the original guardian ad litem, was discharged on September 2, 1981, prior to the first incident of sexual abuse. Thereafter, Judge Witt refused to appoint a new guardian ad litem to represent the minor plaintiff in the Illinois abuse proceedings.

sexual abuse of the infant on September 7, 1981, and September 6, 1982, was filed in the Minnesota District Court, a court of general jurisdiction,[3] praying for tort damages. Because of the allegation of sexual abuse of the infant, sexual abuse aspects of the matter were referred by the sitting District Court Judge to the Minnesota Juvenile Court, a division of the District Court for attention. The Juvenile Court, on the basis of a petition of the infant's maternal uncle, initiated a statutory dependency and neglect procedure, naming both the father, mother, and the child (through a court appointed guardian ad litem), as parties.

George failed to appear in the tort action and a default judgment was entered against him on December 23, 1982. In January 1983, undisputed evidence of certain improprieties

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[3]See Minn. Stat. 484.01.

of Judge Witt in connection with the relations with George's attorney came to light[4] and the matter was transferred to Judge Emilio Santi of the same court. Judge Santi filed an order on February 23, 1983, staying all Illinois proceedings in favor of the Minnesota Juvenile Court proceedings. His order stated:

> This cause coming on to be heard on all pending matters and the court being advised that there remains pending a certain juvenile proceeding in the courts of Minnesota, it is hereby ordered that all pending matters are continued generally until further notice.

See Appendix C-3, p. 80.

On March 30, 1983, George moved for a vacation of the default judgment and a

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[4]It appears that George's attorney had been counsel for Judge Witt in other matters, and there was evidence of improper contacts with George's attorney. These improprieties are a matter of record pursuant to affidavits filed in the Lake County, Illinois, Circuit Court.

dismissal of both the tort and Juvenile Court actions on the grounds that subject matter jurisdiction was lacking in the Juvenile Court and that Judge Witt's October 20, 1982 findings had a res judicata and collateral estoppel effect on the Minnesota proceedings.

On July 5, 1983, Judge Allen Oleisky, who had heard the motions in his dual capacity as District Court and Juvenile Judge, granted the application for vacation of the default judgment in the tort action, conditioned upon his filing a verified Answer to the Complaint. He denied the motions for the dismissals of the tort action and the Juvenile Court proceeding, stating (Appendix D-1):

> The present case involves allegations of sexual abuse of a minor child within the State of Minnesota, under these circumstances jurisdiction over the subject matter of this type

> of action rests on Minn. Stat. Section 260.111. This statute gives the Juvenile Court original and exclusive jurisdiction over neglected and dependent children within the State of Minnesota.

With respect to the issue of subject matter jurisdiction of the District Court, Judge Oleisky stated (Appendix D-1):

> The Court also has jurisdiction over the subject matter and personal jurisdiction in that the action was instituted as a tort action, Minn. Stat. Section 543.19.

Answering a contention that Judge Witt's order was an Illinois judgment as to which the Minnesota courts were obligated to award full faith and credit, Judge Oleisky stated (Appendix D-1):

> When a child is found to be dependent or neglected within the state, the state is not required to give full faith and credit to the custody decisions of another state. In re Longseth, 282 Minn. 28, 162 N.W.2d 365 (1968).... Defendant argues that the action must be dismissed on the grounds of res judicata and collateral

> estoppel. The minor child plaintiff in this case was not a party to the child abuse hearing in Illinois. The presiding judge in Illinois denied a motion for a guardian ad litem.

See Appendix D-1.

On August 15, 1983, George filed a verified Answer and Counterclaim in the tort action. On February 3, 1984, a new motion by George for dismissal of the Juvenile Court proceeding for lack of subject matter jurisdiction was denied by Judge Peter Albrecht. In his new motion, George contended that "primary jurisdiction" accorded the Illinois court under the Uniform Child Custody Jurisdiction Act (UCCJA) precluded the existence of subject matter jurisdiction in the Minnesota Juvenile Court.

In his February 3, 1984 denial memorandum (Appendix D-2), Judge Albrecht held that the Minnesota Juvenile Court had statutory subject matter jurisdiction under Minn. Stat.

Section 260.111, as had been previously held by Judge Oleisky on July 5, 1983; that the UCCJA was inapplicable because the dependency proceeding was not a "child custody" case as contemplated by the UCCJA, and that even if it were assumed that the UCCJA applied, the Juvenile court still had jurisdiction under the "home state" and "best interest" provision of the Minnesota provisions of the UCCJA.

Judge Albrecht concluded by stating (Appendix D-2):

> Finally... the record before this Court indicates that the Illinois Court has specifically stayed further proceedings in that state until resolution of the Hennepin County proceedings."[5]

On April 25, 1985, the Minnesota Juvenile

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[5]It is unclear whether Judge Albrecht's denial memorandum was brought to the attention of the Cook County Circuit Court. His memorandum was specifically brought to the attention of the Appellate Court in plaintiff's petition for rehearing.

Court, after the completion of a seven-day contested hearing, held on the basis of significant additional evidence that George had sexually abused the infant between September 4 and September 7, 1981, and on September 6, 1982. (Appendix D-3).[6]

The additional evidence included a January 24, 1983 report by the Illinois Department of Child and Family Service that it had concluded on the basis of a "thorough investigation" that Sarah had been sexually abused by George. A videotape interview with the child by a Minneapolis police officer indicated that child abuse had occurred. Records of the child's pediatrician revealed that it was highly questionable that a hymen intact prior to

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[6]Contrary to George's representation to the Illinois Appellate Court, George appeared at the hearing and was represented by counsel throughout.

September 6, 1982, was thereafter intact. Two psychologists, specialists in child sexual abuse cases, after hearing a tape recording of the child's statements and viewing the videotape interview, were of the opinion that sexual abuse had occurred. Dr. Shapiro, the child's psychiatrist testified, on the basis of nine additional interviews with the child, that in his opinion, she had been sexually abused on the dates in question.

A dispositional hearing was set by the Juvenile Court for June 5, 1984, at which George refused to appear. Instead, he submitted a statement in which he advised that he would not participate in any further proceedings in the State of Minnesota or file an appeal.

Based on the findings in the Juvenile Court action, plaintiff filed a motion in the

tort action for summary judgment on the issue of liability. George did not oppose the motion and partial summary judgment on the issue of liability was granted in favor of the infant plaintiff on the issue of liability on April 24, 1985.

Trial was scheduled for June 3, 1985. Although duly notified, George failed to appear. After the court heard evidence as to damages, judgment was entered in favor of the infant and against her father in the sum of $325,000.

The Minnesota tort judgment was registered as a foreign judgment in the Cook County Illinois Circuit Court on April 9, 1986.

On June 24, 1986, George moved the court to set aside the registration on the ground that the Minnesota Juvenile Court, upon whose findings the tort judgment was based, lacked

primary subject matter jurisdiction; that Minnesota had erred in failing to give full faith and credit to the Illinois decision; and that the doctrine of res judicata had precluded the Minnesota Juvenile Court from considering the issue of sexual abuse. The motion was denied on July 24, 1986.

An amended motion to set aside the registration was filed on August 4, 1986, and supplemented by a motion for a change of venue. On September 11, 1986, Sarah filed a response to the amended motion, in which she stated: (pp. 2-3))

> [defendant's] memorandum fails to state any grounds which would or could serve as a defense to plaintiff's constitutional right to seek full faith and credit in the Illinois Courts for the adjudication in the District Court of Hennepin County, Minnesota.

On April 7, 1987, the Cook County, Illinois Court requested the parties to

respond to the following questions:[7]

1. Did defendant appear in the Minnesota tort action: if not, was there proper service. Plaintiff advised that defendant had appeared in the tort action, that the Minnesota Court had personal jurisdiction over him, and that defendant had admitted this in his memorandum. (See Plaintiff's Memorandum filed May 19, 1987, p. 2).

2. In the Minnesota Juvenile and District Court actions, did defendant raise the issue of the full faith and credit of the Illinois Court? Plaintiff answered "yes" and pointed out that defendant had in his Memorandum acknowledged and admitted raising the issue. (Id., p. 2).

3. Is Sarah precluded by the Illinois Judgment in Lake County, on the basis of res

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[7]The questions are set out in Appendix A-4, pp. 47-48. See also Plaintiff's Memorandum filed May 19, 1987.

judicata and/or full faith and credit? Plaintiff answered that the Illinois Family court was not a court of competent authority to render findings which were entitled to full faith and credit or res judicata in a tort proceeding. (Id., pp. 2-3).

4. Did the District Court in Minnesota grant summary judgment regarding liability based on the Minnesota Juvenile Court findings? The plaintiff responded in the affirmative (Id., p. 3) and responded further, as follows:

> ....ancillary to the tort action, a Petition was brought in the Juvenile Division... where... the Minnesota Juvenile Court specifically found it had jurisdiction of the subject matter....The Court specifically rejected defendant's argument of collateral estoppel and res judicata.... Later in the tort proceedings... the Court found that based upon the findings in the dependency action, the issue of liability has been fully adjudicated....Plaintiff would urge that inquiry into the basis

> for the findings of liability by the Minnesota Juvenile Court is beyond the scope of permissible inquiry in these proceedings wherein the issue is whether or not the decree of the Minnesota Court is entitled to full faith and credit.... (Id., pp. 3-4).

Plaintiff further contended:

> Under the doctrine of full faith and credit, the foreign court will not rehear a case on its merits because the judgment is res judicata as to the nature and amount of plaintiff's claim....Defendant [in effect] urges this Court to expand the law of the State of Illinois and the constitutional concepts of Full Faith and Credit to provide an additional defense to the registration of a foreign judgment. (Id., pp. 7-8).

A motion by George, filed on March 18, 1987, for a transfer of venue was denied. On June 4, 1987, the Circuit Court of Cook County denied George's motion to set aside the registration. In the course of its oral opinion the Court pointed out that the full faith and credit clause prevented a

collateral Illinois attack on the validity of the judgment since the issues of lack of subject matter jurisdiction and issue preclusion had been litigated and determined adversely to the defendant in the Minnesota proceedings. In this connection, the Court ruled: (Appendix A-4, p. 48)

> Of course the foundation stone of this case is the claim by the plaintiff Sarah here that this court is without authority to go behind the judgment of the Minnesota Court pursuant to the full faith and credit clause which is Article 4, Section 1 of the Constitution of the United States.

On October 30, 1987, in connection with a motion to supplement this record, the following discussion took place between the Court and Mr. Walker, counsel for defendant: (Report of October 30, 1987 Proceedings, p. 3, line 23 - p. 4, line).

> THE COURT: Mr. Walker, I have read your motion... you have raised the defense that while it

> may be true... that the Minnesota judgment is entitled to full faith and credit, you have nonetheless claimed that the Minnesota Court failed to give full faith and credit to the Illinois judgment. That is your key proposition.
>
> MR. WALKER: That is right... Their judgments should not be given full faith and credit because they failed to give full faith and credit to the Illinois judgment."

The motion to reconsider was denied on November 5, 1987, and on December 4, 1987, defendant filed an appeal from the June 4, 1987, denial of the motion to set aside the registration of the Minnesota judgment.

In her answering brief on the appeal, the minor plaintiff argued (Plaintiff-Appellee's Brief, p. 4) that under the "Full Faith and Credit clause of the United States Constitution (U.S. Const. Art. 4, Sec. 1)... a judgment is afforded the same faith, credit, conclusive effect and obligatory

force in other states as it has by law or usage in the state in which the judgment was taken. [citations]." She also argued that under Minn. Stat. Section 260.111, the Minnesota Juvenile Court had found that it had original and exclusive jurisdiction in a dependency proceeding involving the sexual abuse of a minor in Minnesota so as to negate any question of subject matter jurisdiction, and that: (Plaintiff-Appellee's Brief, pp. 5-6).

> If the full faith and credit clause is to be given the true meaning, the courts of Illinois should recognize all orders and judgments of its sister states, even though such orders or judgments may be inconsistent with Illinois law.

On March 31, 1989, the Illinois Appellate Court set aside the registration of the Minnesota judgment on the following ground:

> that the Illinois decisions were res judicata of the Minnesota Juvenile Court proceeding, and, additionally, that the Minnesota

> Court lacked jurisdiction to enter its judgment because the exercise of its jurisdiction was in contravention of the purposes for which the UCCJA was enacted.

See Appendix A-2, pp. 21-22).

The Illinois Appellate Court held that the Witt decision should have been given full faith and credit in the Minnesota Juvenile Court proceedings. In this respect it held: (Appendix A-2, pp. 22-23).

> We first observe that the full faith and credit clause of the United States Constitution (U.S. Const. art IV, sec. 1) requires an application of res judicata where the parties involved in the matter are the same, or those in privity with them, and the cause of action and the subject matter of both suits are the same [citation]. Here, the Minnesota Juvenile Court apparently believed that the Illinois decisions were not res judicata... because it found there was "significant difference" in the evidence presented to it subsequent to the Illinois decisions.

The Appellate Court acknowledged the rule

that where inconsistent judgments exist, the "full faith and credit clause requires the latest judgment to be controlling", but was apparently under the impression that the judgment which was the subject of registration, was a child custody judgment rather than a tort money judgment. It stated: (Appendix A-2, pp. 26-27):

> We first note that plaintiff's reliance on Sullivan v. Sullivan (1981), 98 Ill. App. 3d 928, 424 N.E.2d 957--for the proposition that where another state fails to give full faith and credit to a judgment of Illinois, Illinois nevertheless is obligated to give full faith and credit to the other state's later judgment--is misplaced under the circumstances here. At issue in Sullivan was the payment of past due support and maintenance obligations. The case before us is a custody matter. Certainly, the custody of children and payment of monies require different considerations....

In a petition for rehearing filed May 11, 1989, the plaintiff pointed out the fact

that the Appellate Court had failed to mention or consider the following record facts pertinent to a review of its full faith and credit treatment of the Minnesota tort judgment:

(1) That the Illinois Family Court had specifically relinquished jurisdiction to the Minnesota Juvenile Court and had stayed proceedings in Illinois for that reason. (Petition for Rehearing, p. 5).

(2) That the Minnesota Juvenile Court had specifically ruled, as against George's claim of lack of subject matter jurisdiction, that it had "original and exclusive" subject jurisdiction; and that in the event Illinois had not stayed proceedings, the "home state" and "best interest" provisions of the UCCJA gave the Minnesota juvenile court priority jurisdiction. (Id., pp. 3-4).

(3) That George's claims of lack of subject matter jurisdiction in the Minnesota juvenile court had been litigated and determined against him. (Id., pp. 3-4).

(4) That the Minnesota juvenile court had specifically ruled that the UCCJA was not applicable because the dependency and neglect proceeding was not a "child custody" proceeding. (Id., p. 4).

The motion for rehearing was denied on May 17, 1989.

The plaintiff then filed a Petition for Leave to Appeal to the Illinois Supreme Court. In her Petition, plaintiff asserted that "in rendering its decision, the appellate court ignored the Full Faith and Credit Clause and the Federal Res Judicata Act implementing it." (Petition for Leave to Appeal, p. 25.)

The Illinois Supreme Court denied the Petition for Leave to Appeal on October 5, 1989.

REASONS FOR GRANTING THE PETITION

I.

The refusal of the Illinois appellate courts to afford full faith and credit to a Minnesota tort judgment directly violates the Full Faith and Credit clause of the Constitution, the plain language of the implementing statute (28 U.S.C., Sec. 1738) and an unbroken line of this Court's cases which stretch back to the dawn of the Republic.

The Full Faith and Credit clause reads as follows:

> Full Faith and Credit shall be given in each state to the public Acts, Records and Judicial Proceedings of every other state.

The First Congress promptly adopted implementing legislation requiring that a

state judgment be accorded "such faith and credit" as it would have "by law or usage in the courts of the state" in which it was rendered. See Act of May 26, 1790, c.11, 1 Stat. 122.

The present statute, 28 U.S.C., Section 1738, contains similar language:

> [The] judicial proceedings of any court of any such state, territory or possession [of the United States...] shall have the same full faith and credit in every court within the United States as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

As Wright and Miller have explained:

> "The most familiar application of this statute has long involved enforcement of money judgments. In this area, it has long been accepted that although judgments in one state are not immediately enforceable by execution in another state, all other states are obliged too provide for registration or an independent action on the judgment and to enforce it by the same means of execution as are available for

> local judgments. Not even strong concepts of local policy can be interposed to defeat enforcement.

See Wright, Miller & Cooper, Federal Practice and Procedure: Jurisdiction, Section 4467.

This basic rule has been firmly established since Mills v. Duryea, 7 Cranch (11 U.S.) 481, 484, 3 L.Ed. 411 (1813). There the judgment creditor had obtained a judgment in the New York state courts and sought to enforce it in the Circuit Court for the District of Columbia. The Court held that since the judgment was conclusive between the parties in New York, it must be conclusive between the parties in the District of Columbia. The Court went on to state that "it remains only then to inquire in every case what is the effect of a judgment in the state where it is rendered."

This principle was reiterated five years later by Chief Justice Marshall in Hampton v.

McConnell, 3 Wheat (16 U.S.) 234, 236-237, 4 L.Ed. 378 (1818), where the Court stated that "the judgment of a state court shall have the same credit, validity, and effect which it had where it was pronounced, and that whatever pleas would be good to a suit thereon in such state, and none others could be pleaded in any other court of the United States." See also Roche v. McDonald, 275 U.S. 449, 48 S.Ct. 142, 72 L.Ed. 365 (1928); Fauntleroy v. Lum, 210 U.S. 230, 28 S.Ct. 641, 52 L.Ed. 1039 (1908).

Thus, the only issue before the Illinois Appellate Court was whether the plaintiff had a valid money judgment under Minnesota law. There can be no question that the judgment is valid in Minnesota. The Hennepin County District Court is a court of general jurisdiction with unquestioned power to enter a money judgment. See M.S.A. 484.01. The

time for appeal has long ago expired.[8] Therefore, under Minnesota Law, the judgment is conclusive.

II.

The Illinois appellate courts violated the Full Faith and Credit clause by subjecting a Minnesota tort judgment to collateral attack in an Illinois registration proceeding.

As has been noted, the sexual abuse findings of the Minnesota Juvenile Court served as a basis for summary judgment in the tort action on the issue of liability. In vacating the registration of the tort judgment of the Minnesota District Court, the Illinois Appellate Court reexamined the proceedings underlying the tort judgment and

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[8]Under Minnesota law, the defendant has ninety days from the date of entry of judgment to file an appeal. See Rule 104.01, Minnesota Rules of Appellate Procedure.

found that the Minnesota Juvenile Court proceedings were void for lack of subject matter jurisdiction. It then held, without a statement of reasons, that the tort judgment was void because it was founded upon a void Juvenile Court judgment, and that the Full Faith and Credit Clause of the United States did not apply where this was the case.

In so holding, the Appellate Court totally ignored the fact that the District Court judgment was regular on its face and had been rendered by a court of general jurisdiction possessing personal and subject matter jurisdiction in the tort action. Where this is the case, the tort judgment is immune from precisely the type of collateral attack in which the Appellate Court engaged in denying registration.[9] As this Court has

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[9]Milliken v. Meyer, 311 U.S. 457, 61 S.Ct. 339, 85 L.Ed. 278 (1940), rehearing denied, 312 U.S. 712, 61 S. Ct. 548, 85

pointed out, where a judgment has been rendered by a court of competent jurisdiction:[10]

> ...the full faith and credit clause of the Constitution precludes any inquiry into the merits of the cause of action, the logic or the consistency of the decision or the legal principles on which the judgment is based.

L.Ed. 1113 (1941). It is fundamental that in an action on the judgment the original cause of action cannot be examined on the merits. "[N]o item of defense may be asserted that existed prior to the judgment and which might have been set up in the original proceedings." Indemnity Ins. Co. v. Smoot, 80 U.S. App. D.C. 287, 290, 152 F.2d 667, 670, (D.C. Cir., 1945), cert. denied, 328 U.S. 835, 66 S.Ct. 981, 90 L.Ed. 1611. "The judgment of a court having jurisdiction cannot be collaterally attacked and the question of fact once determined must, as between the same parties, be taken as conclusively established and accorded res judicata effect." Insurance Co. of North America v. Bay, 784 F.2d 869, 876 (8th Cir. 1986). See also Christmas v. Russell, 5 Wall. 290, 72 U.S. 290, 18 L.Ed. 475 (1866).

[10]Milliken v. Meyer, 311 U.S. 457, 462, 61 S.Ct. 339, 85 L.Ed 278 (1940), rehearing denied, 312 U.S. 712, 61 S.Ct. 548, 85 L.Ed. 1143 (1941).

Thus, where the rendering court possesses competence, full faith and credit cannot be denied merely because alleged mistakes of law underlie the judgment[11] or it is based on a prior void judgment.[12]

The failure of the Appellate Court to recognize and apply this principle may well have occurred because of its misperception that the judgment sought to be registered was a child custody judgment rendered by the Minnesota Juvenile Court, rather than a tort money judgment rendered by the Minnesota

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[11]Even if the Minnesota District Court had erred in holding that it was entitled in the summary motion hearing to rely on the Juvenile Court findings of sexual abuse. any error of law was not a defense to the Illinois registration. If a court has jurisdiction, full faith and credit cannot be denied merely because mistakes of law may underlie the judgment. Fauntleroy v. Lum, 210 U.S. 230, 237, 28 S.Ct., 641, 52 L.Ed. 1039 (1908).

[12]See, for example, MacVey v. MacVey, 98 A.2d 794, 795 (D.C. Mun. App., 1953).

District Court. In attempting to distinguish the situation in Sullivan v. Sullivan, (1981) 98 Ill. App. 3d 928, 424 N.E.2d 957, an Illinois decision which allowed registration, from the situation before it, the Appellate Court stated: (Appendix A-4, p. 27).

> The case before us is a custody matter. Certainly the custody of children and payment of monies require different consideration." (emphasis supplied)

Although the record was crystal clear that the tort judgment had been rendered by a Minnesota court of competent jurisdiction, there was a total failure of the Appellate Court to take note of this fact or to give it appropriate full faith and credit recognition. Although the defendant has not disputed the fact, the Illinois Appellate Court has failed to take cognizance of the inapplicability of collateral attack even though the Court's omission was called to its

attention by a motion for a rehearing.

III.

An alleged "erroneous exercise of subject matter jurisdiction" neither rendered the Juvenile Court proceedings void nor excused the failure of the Illinois Appellate Court to give full faith and credit to a Minnesota tort judgment.

As has been noted, the regularity of the tort judgment on its face and the undisputed general jurisdiction of the rendering court debarred the defendant from collaterally attacking the facts underlying the judgment. Nonetheless, the Illinois Appellate Court undertook to inquire whether the Juvenile Court had possessed subject matter jurisdiction. It then found that the proceedings of the Juvenile Court were void because the Juvenile Court had erroneously exercised subject matter jurisdiction in

failing to yield concurrent subject matter jurisdiction to the primary jurisdiction of the Illinois courts. (Appendix A-4, pp. 26-31).

In doing so, the Illinois Appellate Court overlooked the well settled principle that an erroneous exercise of judgment does not render a court's judgment void. At best, it renders the judgment voidable. Absent direct attack, it remains in effect. An error in the exercise of jurisdiction is distinguishable from a lack of jurisdiction. This Court, as well as the lower Federal courts, have repeatedly held that a court has the power to determine its own jurisdiction and an error in the determination will not render the judgment void. Underwriters Nat. Assur. v. N.C. Life & Acc. Guar. Assn., 455 U.S. 691, 708, 102 S. Ct. 1357, 71 L.Ed. 2d 558 (1982); Stoll v. Gottlieb, 305 U.S. 165, 59

S.Ct. 134, 83 L.Ed. 104 (1938); Lubben v. Selective Service System Local Bd. No. 27, 453 F.2d 645, 649 (1st Cir. 1972); Coleman v. Court of Appeals, 550 F. Supp 681, 684 (W.D. Okla. 1980); Hobbs v. U.S. Office of Personnel, 485 F. Supp. 456, 458 (M.D. Fla. 1980).

A fact of which the Illinois Appellate Court failed to take note, and which would have totally destroyed any possible validity to a defense of lack of subject matter jurisdiction, was the "original and exclusive" jurisdiction conferred in such cases upon the Minnesota juvenile court under Sec. 260.111 of the Minnesota Statutes. This fact was specifically mentioned in Judge Oleisky's memorandum of July 5, 1983. Judge Lasser of the Cook County Circuit Court, in rejecting defendant's motion to set aside the registration of the tort judgment, drew to

the attention of the defendant that the defendant was not contesting the fact that the Juvenile Court had original and exclusive subject matter jurisdiction over the proceedings.

This Court has expressly held that even if there has been an error in interpreting a statutory grant of jurisdiction, the effect is not to void a judgment of a court acting pursuant to the statute. Chicot County Drainage District v. Baxter State Bank, 308 U.S. 371, 376-377, 60 S.Ct. 317, 319-20, 84 L.Ed. 329 (1940).

As is obvious, the undisputed fact that the Minnesota Juvenile Court had subject matter jurisdiction on a statutory original and exclusive basis should have chilled any defense that the judgment of the Juvenile Court was void for lack of subject matter jurisdiction. Despite the controlling effect

of this fact, it was completely ignored by the Illinois Appellate Court in arriving at the decision. The omission was specifically called to the Court's attention by the infant's motion for rehearing. The Court's original failure to consider the matter of the Minnesota Juvenile Court's original and exclusive jurisdiction and its subsequent refusal to reconsider the matter represents fundamental error adversely affecting the infant's full faith and credit rights.

Another decisive factor which, if noted and considered would have demolished its finding that the failure of the Juvenile Court to yield to the Illinois courts deprived it of jurisdiction lay in the fact that the Illinois court had specifically relinquished jurisdiction to the Minnesota Juvenile court. Not noted or acknowledged by the Illinois court was the fact that the

Illinois court, by order filed on February 23, 1983, had stayed all pending Illinois proceedings in favor of the Minnesota Juvenile Court proceedings. The provisions of the UCCJA upon which the Illinois Appellate Court relied to support its lack of jurisdiction holding expressly authorized the Minnesota courts to take subject matter jurisdiction under such circumstances. See Ill. Stat. Ch. 40, par. 2108(a).

Since the stay of proceedings in Illinois was in the record before the Appellate Court, it is difficult to understand why it should have been overlooked, except that it was totally inconsistent with the "erroneous exercise of jurisdiction" basis on which the Appellate Court relied in holding that a lack of subject matter jurisdiction rendered the Juvenile Court proceedings void.

The fact that Illinois had relinquished

jurisdiction, and its significance in destroying the basis for the court's "erroneous exercise of jurisdiction" holding, was specifically brought to the attention of the court of appeals in Petitioner's motion for rehearing. The denial of Petitioner's request for rehearing, coupled with the failure of the Appellate Court to originally note and apply the fact of the relinquishment of jurisdiction, resulted in an impairment of the infant's full faith and credit rights since it left intact the basis for the holding that the Juvenile Court judgment was void for lack of subject matter jurisdiction, resulting, according to the Illinois Court of appeals in nullification of the basis for her tort judgment.

IV.

The Illinois Appellate Court violated Petitioner's Full Faith and Credit rights by

refusing to acknowledge that the issue of subject matter jurisdiction had been decided adversely to the judgment debtor in the Minnesota proceedings.

As has been noted, the issue of the subject matter jurisdiction of the Minnesota Juvenile Court had been raised and determined adversely to the judgment debtor in the Minnesota proceedings. The combined decision of the Minnesota Juvenile and District Courts to that effect was in the record before the Illinois Appellate Court. Despite the regularity of the tort judgment on its face and the general jurisdiction of the Minnesota District Court to render it, the Illinois Appellate Court undertook to reexamine the issue and, upon a reexamination of the issue, held that a lack of subject matter jurisdiction voided the Minnesota Juvenile Court judgment which, in turn,

voided the tort judgment.

In so doing, the Illinois Court overlooked this Court's well settled rule in full faith and credit situations, that the courts of a sister state cannot subject a foreign judgment to a readjudication of a jurisdictional issue where the issue has been litigated and determined adversely to the judgment debtor in the foreign state. Durfee v. Duke, 375 U.S. 106, 112-113, 84 S.Ct. 242, 11 L.Ed.2d 186 (1963); Coe v. Coe, 334 U.S. 378, 68 S.Ct. 1094, 92 L.Ed. 1451 (1948). As this Court has stated: "...Where one voluntarily appears, presents his case and is fully heard...[he is] thereafter concluded on the question of subject matter jurisdiction by the determination of the court." Durfee v. Duke, 375 U.S. at 111-112, 84 S.Ct. at 245, 11 L.Ed. 2d at 1911. See also Davis v. Davis, 305 U.S. 32, 59 S. Ct.

3, 83 L.Ed. 32 (1938). The judgment debtor had refused to participate in the summary judgment proceedings following the entry of the Juvenile Court dependency order. There is no justification to deny full faith and credit to a judgment "because a party with notice of the proceedings chose to stay away ..." DiMauro v. Pania, 492 F. Supp. 1051, 1063, (D. Conn. 1979), aff'd 614 F.2d 1286 (2d Cir. 1979).

The failure of the Illinois Appellate Court to acknowledge and accord respect to this settled principle of full faith and credit law was specifically presented to the Illinois Appellate Court on motion for rehearing. Its failure to originally acknowledge the effect of prior adverse litigation and its refusal to reconsider the matter constitute a fundamental violation of the infant's full faith and credit rights.

V.

The failure of the Minnesota courts to accord issue preclusion to the Illinois findings was not a legitimate defense to Illinois recordation of the tort judgment.

The defendant had contended in both the Minnesota Juvenile and District court proceedings that Judge Witt's Illinois findings with respect to sexual abuse were controlling under res judicata and collateral estoppel principles. Both Minnesota courts had rejected this contention, citing the fact that Minnesota law precluded the application of issue preclusion since the infant had not been made a party to the Illinois proceedings.[13] The Juvenile Court, after a

[13]Since defendant failed to take a direct appeal to the Minnesota Court of Appeals, he may not now argue that Judge Oleisky's ruling on res judicata was in error. See Marin v. Augedahl, 247 U.S. 142, 38 S.Ct. 452, 62 L.Ed. 1038 (1918). However, it must be pointed out that Judge

comprehensive evidentiary hearing, had further rejected the contention on the basis of significant additional evidence of sexual abuse of the infant.

In addition, as pointed out by Judge Oleisky in his July 5, 1983 memorandum order, the appointment of a fake "psychiatrist" as an expert raised a question as to whether the issue of sexual abuse had been "fairly and fully" tried by Judge Witt.

In complete disregard of the full faith and credit rule which requires a subsequent court to award controlling effect to the law of the state in which the judgment was

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Oleisky's ruling is in accord with the great weight of authority which recognizes that privity does not extend to the parent-child relationship and the child is not bound by the results of a lawsuit involving a parent unless he or she is made a party. See 1 B.J. Moore, Moore's Federal Practice 0.411[11] (2d ed. 1974) cited with approval in Johnson v. Hunter, (Minn., November 10, 1989); see also Fay v. South Colonie Central School District, 802 F.2d 21, 30, fn. 1 (2d Cir. 1986).

rendered[14], the Appellate Court held that the infant was bound under Illinois law by the findings in the Witt proceeding even though she had not been named as a party or allowed a guardian ad litem to protect her interests.

Again, in complete disregard of the full faith and credit rule precluding the reexamination of evidence upon which the legal ruling of the foreign state was made,[15] the Appellate Court undertook to weigh and compare the evidence introduced in both proceedings. In the absence of the trial record in the Juvenile Court proceedings, th Appellate Court utilized only the Findings made by Judge Albrecht. It then held, contrary to Judge Albrecht's Findings that the evidence in both cases was virtually

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[14]See, e.g., Titus v. Wallick, 306 U.S. 282, 59 S.Ct. 557, 83 L.Ed. 653 (1939).

[15]See, e.g., Marin v. Augedahl, 247 U.S. 142, 38 S.Ct. 452, 62 L.Ed. 1038 (1918).

identical.

The Appellate Court apparently read only a single finding referable to Dr. Shapiro's testimony, ignoring the nature of the evidence reflected in numerous other findings. Normally, the conclusion of the Illinois Appellate Court as to the quality and quantity of the evidence in the two hearings would be immaterial in view of the rule precluding collateral attack. Nonetheless, the assertion by the Illinois Appellate Court that Judge Albrecht's findings were essentially barren of additional significant evidence invites inquiry as to its fairness in examining only the finding relating to Dr. Shapiro's testimony.

In the Witt hearings, as conceded by the Illinois Appellate Court, the only "expert" supporting Judge Witt's findings was the

fake "psychiatrist" whom he had appointed.[16] This "expert" had been called by the father. The only genuine "expert" was one called by the mother in the form of Dr. Stanley Shapiro, a reputable psychiatrist experienced in child abuse cases.

Against this evidence, with the facilities available to it, the Juvenile Court had before it, among other things, a taped interview with the infant regarding her sexual abuse, a report of an investigation by the Family and Children's Service Department of the State of Illinois, a videotape study of the child's reactions during an interview by a police expert in sexual abuse cases, the testimony of two child psychologists who specialized in child abuse cases, and the

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[16]Judge Witt's "expert" was actually an unlicensed psychologist who practiced "marriage counseling." (See Transcript of proceedings, June 10, 1982, pp. 00468-00469).

testimony of Dr. Shapiro as to the results of nine additional interviews with the child subsequent to the Witt hearings.

VI.

Even if the Illinois Appellate Court had been correct in holding that the Minnesota courts had erred in refusing to accord res judicata or collateral estoppel effect to the Witt finding, such an error was not an appropriate basis under full faith and credit rules for setting aside the Illinois registration of the Minnesota tort judgment.

This Court has settled the rule that full faith and credit must be given to the "last in time" of inconsistent judgments by its holding that the last in time judgment is deemed to be a res judicata holding that the prior judgment was not a preclusive one. Treinies v. Sunshine Mining Co., 308 U.S. 66, 60 S.Ct. 44, 84 L.Ed. 85 (1939). It has been

explained:[17]

> When two inconsistent judgments exist it is tempting for a court to reexamine the merits of the litigant's dispute and choose the result it likes best. There are important reasons to avoid this temptation...Second, the most recent court to decide the matter may have considered and requested the operation of the prior judgment as res judicata and its decision should be treated as res judicata on the preclusive effect of the prior judgment....Therefore, even when we think that the most recent judgment is wrong, we still give it res judicata effect so that finality is achieved and the parties are encouraged to appeal an inconsistent judgment directly rather than attack it collaterally before another court."

The facts in Blair v. Supreme Court of the State of Wyoming, 671 F.2d 389 (10th Cir. 1982), are closely analogous to those in the instant case. In that case, the parental rights of a father to custody of the child

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[17]Robi v. Five Platters, Inc., 838 F.2d 318, 322-323 (9th Cir. 1988).

had been determined in his favor in a Colorado proceeding. In a subsequent proceeding in the Wyoming courts to terminate his parental rights, he had contended, unsuccessfully, that the Wyoming court lacked subject matter jurisdiction because of the previous favorable Colorado decree.

In holding that Wyoming's refusal to accord preclusive effect to the Colorado decree could not be challenged in a federal court proceeding in which the father challenged the constitutional right of the Wyoming court to disregard the Colorado finding, the United States Court of Appeals stated:[18]

> [Blair] contends the Wyoming court did not have subject matter jurisdiction to terminate his parental rights because the custody of his child had previously been determined by a

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[18] Id., at 671 F.2d 391.

> Colorado court. (citation). Blair's pleadings show that he raised this jurisdictional claim in the Wyoming trial court and that it was decided against him. Consequently, he is precluded from relitigating this issue in a federal court. (citations). The same is true of Blair's contention that the finding of non-support is erroneous under the evidence.

The Illinois Appellate Court recognized that the "last-in-time" rule would normally have required it to give full faith and credit to the tort judgment. However, it asserted that it was entitled to limit the application of full faith and credit where a prior decision involved child custody. It reasoned that in so doing it was furthering the purposes of not relitigating child custody proceedings in a different state.

In so holding, it ignored that it was comparing apples and oranges since the tort judgment involved a money judgment for personal injury sustained by the infant and

did not involve a dispute as to the custody of the child. More important, the Juvenile Court proceeding was a dependency and neglect proceeding focusing upon the personal protection of a child from abuse and did not interfere in any way with the custody granted to the mother by the Illinois family court. It must also be pointed out that the Appellate Court's fear of relitigation was unfounded since the Illinois family court had relinquished jurisdiction, and the Juvenile Court possessed original and exclusive jurisdiction in the matter. In the final analysis, the Illinois Appellate Court was simply refusing to face the fact that it had no right to collaterally attack the underlying basis for the judgment of a court of competent jurisdiction.

CONCLUSION

It is submitted that the petitioner has

amply demonstrated the violation of her full faith and credit rights under the U.S. Constitution by the Illinois Appellate Court's vacation of the Illinois registration of her Minnesota tort money judgment.

It is clear that her rights were violated by permitting an improper collateral attack upon the merits of the judgment, particularly where controlling full faith and credit factors were disregarded, although they were part of the record and called to the attention of the Illinois Appellate Court.

Petitioner respectfully requests that the Court grant her petition for writ of certiorari.

Dated: January 3, 1990

SCHERMER, ALTMAN & IZEK

DANIEL W. SCHERMER
Attorney for Petitioner
1600 Foshay Tower
Minneapolis, MN 55402
(612) 33-4690
Attorney Reg. No. 96556

89-1086

Supreme Court, U.S.
FILED
JAN 3 1990
JOSEPH F. SPANIOL, JR.
CLERK

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1989

SARAH KLUMPNER, a minor, by
RICHARD KAHN, her Guardian ad Litem,

Petitioner

V.

GEORGE H. KLUMPNER

Respondent

ON WRIT OF CERTIORARI FROM THE
ILLINOIS SUPREME COURT

PETITIONER'S APPENDIX
Volume One

DANIEL W. SCHERMER
Attorney for Petitioner
1600 Foshay Tower
Minneapolis, MN 55402
(612) 333-4690
Attorney Reg. No. 96556

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ILLINOIS SUPREME COURT
JULEANN HORNYAK, CLERK
SUPREME COURT BUILDING
SPRINGFIELD, ILL 02706
(217) 782-2035

October 5, 1989

Mr. Robert E. Burke
Attorney at Law
4721 West Elm Street
McHenry, IL 60050

No. 68840 - Sarah Klumpner, a Minor, et al., etc., petitioner, v. George H. Klumpner, respondent. Leave to appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on October 27, 1989.

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

March 31, 1989

Sarah Klumpner, a minor, by
Richard Kahn, her Guardian
ad Litem,

Plaintiff-appellee

v.

George H. Klumpner,

Defendant-appellant

William J. Harte, David J. Walker, of counsel, William J. Harte, Ltd., Chicago, for defendant-appellant.

Robert E. Burke, McHenry, for plaintiff-appellee.

Presiding Justice MURRAY delivered the opinion of the court:

Defendant George H. Klumpner appeals from an order of the circuit court of Cook County denying his motions to vacate the

registration of a foreign judgment and for a change of venue.

The foreign judgment at issue in this matter was entered by the Fourth Judicial District Court of Hennepin County, Minnesota, in 1984 after a number of proceedings instituted first in Illinois and subsequently in Minnesota. Specifically, on August 13, 1980, Judith Klumpner filed a petition for dissolution of her marriage to George in the circuit court of the Nineteenth Judicial Circuit, Lake County, Illinois, and sought custody of their minor child, Sarah, born December 31, 1978. Shortly thereafter, she left the marital home, taking Sarah with her without court approval, and moved to Minnesota where her brother, Richard Kahn, resided. On September 3, 1980, Judith filed an amended petition alleging that George was guilty of extreme and repeated mental

cruelty. On September 11, 1980, the court granted George visitation with Sarah. Judith subsequently filed a petition to vacate the visitation order, alleging George had psychiatric problems, was an alcoholic, and was a danger to Sarah. On September 24, 1980, George sought a rule to show cause against Judith, alleging she had refused to comply with the court's visitation order and had taken Sarah to a location unknown to him. George also subsequently filed a counter-petition for a dissolution of the parties' marriage, and sought custody of Sarah. On September 26, 1980, the court appointed an attorney for Sarah. That attorney later executed an affidavit wherein he stated that during approximately one year while he served as Sarah's attorney, he had uncovered "no evidence of wrongdoing" by George relative to any allegations made by Judith.

On October 17, 1980, George filed a second petition for rule to show cause against Judith because she continued to refuse to allow him visitation with Sarah and was keeping her at a location unknown to him. On the same date, the court ordered the parties and Sarah to undergo psychiatric evaluation by a court-appointed psychiatrist and that its visitation order be given full effect.

The court entered a judgment of dissolution on July 9, 1981. On August 24, 1981, pursuant to an amended judgment, custody of Sarah was awarded to Judith by agreement of the parties, and George was to have visitation with Sarah in accordance with a schedule attached to the judgment. By an order dated September 2, 1981, the court specifically fixed George's visitation times through the summer of 1982 and expressly provided that visitation would be

redetermined more liberally thereafter. On October 5, 1981, Judith filed an action in the Family District Court of Minnesota, entitled In Re Custody of Sarah Nicole Klumpner, seeking to restrict George's visitation rights with Sarah. The Minnesota court dismissed the case on February 2, 1982, based on its ruling that Illinois had continuing primary jurisdiction over the matter; prior to the dismissal of Judith's action in Minnesota, George had filed a petition for change of custody in Lake County on December 28, 1981. On April 4, 1982, Judith also filed a petition in Lake County for modification of the marriage dissolution judgment, seeking to terminate George's visitation rights with Sarah based on her allegations that George had sexually abused Sarah during his visit with her in Minnesota on September 7, 1981, that he was an

alcoholic, and that he had psychiatric problems.

The Lake County court conducted hearings on the parties' petition on June 10 and September 7, 1982. During the June 10 hearing, Dr. Stanley W. Shapiro, Judith's psychiatric expert who practiced in the St. Louis-Minneapolis area, testified that based on two interviews with Judith and 35-month-old Sarah, George had sexually abused Sarah on September 7, 1981, in Minnesota. George's expert testified to the contrary, this expert examined George and Judith, but not Sarah. At the September 7, 1982, hearing, Judith alleged that George had again abused Sarah on September 6, one day prior to that hearing. In describing the September 1982 incident, Judith referred to similar phrases allegedly used by Sarah and communicated to Dr. Shapiro concerning the September 1981 alleged

molestation. No testimony was given by either of the parties' medical experts at the September 7 hearing regarding this alleged second incident. Closing arguments were made on September 21, 1982. On October 1, 1982, the court denied both parties' petitions; the court ruled that custody of Sarah should remain with Judith, found that there was no credible evidence that George ever physically or sexually abused Sarah, and found that Judith's belief that George's visits with Sarah were detrimental to her health was unsupported by any credible evidence and was irrational. The court further ordered that the parties and Sarah submit to extended psychiatric counseling, allowed George specific visitation with Sarah in Cook County, and continued the cause to February 11, 1983, for a status hearing concerning the progress of the counseling and

as to visitation.

Judith and George both filed appeals from the September 21 order in Lake County. Judith subsequently filed two additional appeals from an order entered December 29, 1982, wherein the Lake County court found her in contempt for refusing to comply with its visitation orders and required her to obtain a $5,000 surety bond to insure her compliance thereafter, and an order dated January 13, 1983, denying, among other requested relief, her motion to vacate the December 29 order.

On December 19, 1983, the Second District of this court, in an unpublished Rule 23 opinion (In re Marriage of Klumpner, 119 Ill.App.3d 1168, 83 Ill.Dec. 954, 471 N.E.2d 253), affirmed the trial court's orders denying George's and Judith's petition for change of custody and termination of George's visitation rights, respectively,

stating that where the evidence was conflicting, the trial court was in a far better position to determine the credibility of the witnesses. The court, however, reversed the trial court's order finding Judith in contempt of court but affirmed the order as to the requirement of posting a bond to assure compliance with the court's orders of George's visitation with Sarah. A subsequent petition for leave to appeal to our supreme court filed by Judith was denied.

Apparently shortly after the denial of Judith's petition for leave to appeal to the supreme court, Richard Kahn, Judith's brother, filed an action as guardian ad litem of Sarah in the juvenile division of the Fourth Judicial District, Hennepin County, Minnesota, entitled In re the Matter of the

Welfare of Sarah Klumpner,[1] to have Sarah adjudicated a dependent and neglected child. The identical allegations of sexual abuse of Sarah by George on September 7, 1981, and September 6, 1982, were reasserted in this action. The Court conducted hearings on February 13-17, 23, and 24, 1984. In rendering its decision that George had sexually abused Sarah, the Minnesota court conceded that its findings contravened those of the Illinois courts, but stated its decision was based on "significant differences" in the evidence presented; i.e., the court relied heavily on the testimony of Dr. Shapiro based on his interviews with Judith and Sarah subsequent to the Lake

[1]It is unclear from the record when this action was filed and whether Richard Kahn was in fact ever legally the guardian ad litem of Sarah. However, in later Minnesota proceedings concerning this matter, the court did appoint a guardian ad litem other than Richard Kahn.

County proceedings and decisions. A disposition hearing was set for June 5, 1984. Prior to that time, George sent a letter to the court stating he would not appear at the hearing, asserting, among other reasons, that the Minnesota trial judge in the juvenile proceeding was not impartial (he had attended the same law school as Daniel Schermer, Judith's former Illinois babysitter and "new" husband who was openly seeking to adopt Sarah); the evidence presented in the proceeding was "stale, manufactured or paid for"; and the juvenile court's decision was contrary to Illinois' interpretation of the almost identical evidence. The court subsequently terminated George's visitation rights until further order of the court.

At the time the Minnesota juvenile court proceeding was filed, a tort action was filed in the Minnesota district court on behalf of

Sarah for money damages against George. Based on the juvenile court's findings that George had sexually abused Sarah, the district court awarded damages to Sarah in the tort action against George in the amount of $325,000.

On April 9, 1986, Richard Kahn, on behalf of Sarah, filed a petition in the circuit court of Cook County to register the Minnesota judgment. On June 24, 1986, George filed a motion to set aside the registration, arguing that the judgment was invalid because it was based on the findings of the Minnesota juvenile court which lacked primary subject matter jurisdiction, that that court failed to give full faith and credit to Illinois' decision on the same issues, and the doctrine of res judicata precluded the Minnesota juvenile court from rehearing the case which had been "already heard in Illinois." The

Cook County court denied the motion without prejudice and with leave to amend.

George filed an amended motion, again asking the court to set aside the registration of the judgment and, in the alternative, requested an evidentiary hearing in order to "apprise the court of certain unusual facts surrounding the Minnesota judgment," i.e., counsel for the court-appointed guardian ad litem attended the same law school that Dan Schermer and the trial judge attended (graduating in 1972, 1969, and 1971, respectively), that Dan Schermer's father represented Richard Kahn, the petitioner and alleged guardian ad litem of Sarah, and that these relationships were never disclosed to George or made a matter of record in the juvenile court proceedings.

On March 18, 1987, George filed another motion seeking a change of venue from Cook

County to Lake County. Both motions were denied, as was George's subsequent motion for reconsideration of those denials, and this appeal followed.

George, in opposing registration of the Minnesota judgment, contends: (1) the judgment sought to be registered is void because it was based on the decision of the Minnesota juvenile court which did not have subject matter jurisdiction or, in the alternative, because Illinois had primary jurisdiction; (2) the Minnesota judgment should not be enforced in Illinois because the minor child was collaterally estopped from prosecuting her tort action in Minnesota; (3) Illinois should not give full faith and credit to Minnesota's judgment because Minnesota failed to give Illinois' judgment full faith and credit and ignored the principle of res judicata; and (4) the

trial court erred in denying George's motion for a change of venue from Cook County to Lake County.

A foreign judgment is not conclusive if, among other reasons, the foreign court did not have jurisdiction over the subject matter. (Ill.Rev.Stat.1985 ch. 110, par. 12-621(a)(3).) The procedures by which a State court examines into the question of the jurisdiction of the court of a sister state is a matter within the control of the States. (Adam v. Saenger (1938), 303 U.S. 59, 58 S.Ct. 454, 82 L.Ed. 649.) We conclude that the Uniform Child Custody Jurisdiction Act (UCCJA), which has been adopted by both Illinois (Ill.Rev.Stat.1987, ch. 40, par. 2101 et. seq.) and Minnesota (Minn.Stat.Ann. Supp. Sec. 518A.01 et. seq. (West 1989(and applied to visitation rights as well as child custody (Noga v. Noga (1982), 111 Ill.App.3d

328, 67 Ill.Dec. 18, 443 N.E.2d 1142), is dispositive of the jurisdictional issue in this appeal. Under the UCCJA, "'jurisdiction' refers not to the due process limits of potential subject matter or personal jurisdiction [citation], but rather to the legislature's discretionary limitation upon the exercise of existing jurisdiction." (Noga, 111 Ill.App.3d at 330, 67 Ill.Dec. at 20, 443 N.E.2d at 1144.) Thus, a trial court, in order to exercise original jurisdiction (In re Marriage of Dagher (1986), 145 Ill.App.3d 379, 99 Ill.Dec. 269, 495 N.E.2d 1004), as well as continuing jurisdiction over child custody and visitation determinations, must meet certain jurisdictional criteria, regardless of whether that court entered the original decree and specifically retained jurisdiction for enforcement thereof (Noga v. Noga (1982),

111 Ill.App.3d 328, 67 Ill.Dec. 18, 443 N.E.2d 1142; see also Ill.Rev.Stat. 1987, ch. 40, par. 2104 and Minn.Stat.Ann. Supp. Sec. 518A.03 (West 1989)). The same criteria also controls with respect to questions of when a court of one state must recognize and enforce a foreign custody decree or when a court of one state may modify a custody decree rendered by a sister state. Even if a court meets that criteria, however, it may decline to exercise its jurisdiction, and we believe it must in some cases, if it finds that it is an inconvenient forum for making such determinations, under the circumstances of the case, and that a court of another state is a more appropriate forum. (Noga v. Noga (1982), 111 Ill.App.3d 330, 67 Ill.Dec. 18, 443 N.E.2d 1142; Ill.Rev. Stat. 1983, ch. 40, par. 2108; Minn.Stat.Ann.Supp. Sec. 518A.07; Noga, 111 Ill.App.3d at 331, 67 Ill.Dec. at

19, 443 N.E.2d at 1143.) Illinois' and Minnesota's statutes are almost identical with respect to the factors to be considered in determining the inconvenience of a forum. Most pertinent to the instant action is the provision that "if the exercise of jurisdiction by a court of this State would contravene any of the purposes stated in Section 2 of this Act," the court may decline jurisdiction. Ill.Rev.Stat.1983, ch. 430, par 2108; see also Minn.Stat.Ann.Supp. Sec 518A.03 (West 1989).

In Illinois, the general purposes of the UCCJA, among others, are to:

> "1. avoid jurisdictional competition and conflict with courts of other states in matters of child custody which have in the past resulted in the shifting of children from state to state with harmful effects on their well-being;
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> * * * * * * *
>
> 4. discourage continuing controversies over child custody in the interest of greater

stability of home environment and of secure family relationships for the child;

5. deter abductions and other unilateral removals of children undertaken to obtain custody awards;

6. avoid relitigation of custody decisions of other states in this State to the extent to which the avoidance of such relitigation is feasible; ***." (Emphasis added.) (Ill.Rev.Stat. 1983, ch. 40, par. 2102.)

Minnesota's provisions of section 518A.01, subdivisions 1(a), (b), and (c) correspond with Illinois' provisions 1, 5, and 6 of section 2, respectively. Although the Minnesota Statute does not contain a specific provision similar to our provision 4. of section 2, it is clear that the purpose of provision 4. is encompassed by a language contained in section 518A.01, subdivision 1(a) of the Minnesota statute, i.e., "the best interest of the child." See Beier v. Beier (Minn.App.1985), 371 N.W.2d 52 (the

purpose of the UCCJA is to minimize hardships on children by reducing opportunities for interjurisdictional controversies over child custody).

Another pertinent provision in both the Illinois and Minnesota statutes provides:

> "Sec 13. Binding Force and Res Judicata Effect of Custody Judgment. A custody judgment rendered by a court of this State which had jurisdiction under Section 4 binds all parties who have been served in this State or notified in accordance with Section 6 or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to these parties the custody judgment is conclusive as to all issues of law and fact decided and as to the custody determination made unless and until that determination is modified pursuant to law, including the provisions of this Act." (Emphasis added.) Ill.Rev.Stat. 1983, ch. 40, par. 2113; see also Minn.Stat.Ann.Supp. Sec. 518A.12 (West 1989).

[1] Based on the foregoing, we find in the instant case that the Illinois courts'

decisions were res judicata of the Minnesota juvenile court proceeding and, additionally, that the Minnesota court lacked jurisdiction to enter its judgment because the exercise of its jurisdiction was in contravention of the purposes for which the UCCJA was enacted.

[2] We first observe that the full faith and credit clause of the United States Constitution (U.S. Const., art. IV, Sec. 1) requires an application of res judicata where the parties involved in a matter are the same, or those in privity with them, and the cause of action and the subject matter of both suits are the same (Hays v. Louisiana Dock Co. (1983), 117 Ill.App.3d 512, 72 Ill.Dec. 687, 452 N.E.2d 1383). Here, the Minnesota juvenile court apparently believed that the Illinois decisions were not res judicata of the proceeding before it because it found there was a "significant difference"

in the evidence presented to it subsequent to the Illinois decisions. Specifically, the Minnesota court relied heavily on Dr. Shapiro's additional nine interviews with Sarah from September 13 to November 18, 1982, after George allegedly sexually abused Sarah a second time during a visit with her on September 6, 1982. We find, however, that the Minnesota court's representation that Dr. Shapiro's later testimony before it amounted to "significant differences in the evidence from that presented in the Illinois court to be factually unsupported by its written findings of fact and memorandum attached in support thereof and the record of proceedings in Illinois".[2] Like the Minnesota court's

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[2]Section 518A.22 of the UCCJA provides that "[i]f a custody decree has been rendered in another state concerning a child involved in a custody proceeding pending in a court of this state, the court of this state upon taking jurisdiction of the case shall request of the court of the other state a certified

findings of fact which mirror all of Judith's allegations considered and rejected by the Illinois trial and appellate courts, Dr. Shapiro's testimony before the Minnesota court concerning his later interviews with Sarah mirror Judith's allegations and the sexual descriptions of the alleged September 6, 1982, incident made during the September 7, 1982, hearing in the Lake County court. This "evidence" was therefore presented, considered, and rejected by the Lake County court and the Second District of this court.

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copy of the transcript of any court record and other pertinent documents which have been preserved by the court of the other state." (Emphasis added.) (Minn.Stat.Ann.Supp. Section 518A.22 (West 1989); see also Ill.Rev.Stat.1983, ch. 40, par. 2123.) Although there was no pending proceeding in Illinois at the time the juvenile court proceeding was filed, we believe that considering the seriousness of a custody/visitation rights matter that the Minnesota court would nonetheless request the record of proceedings in Illinois. It is unclear whether the Minnesota court did so and had the same record before it as this court.

We do not find any "significant difference" in this evidence merely because it was related by Judith at the September 7, 1982, hearing, rather than Dr. Shapiro, since the identical situation - Judith's allegations and descriptions concerning the September 7, 1981, alleged incident of sexual abuse and Dr. Shapiro's testimonial corroboration in similar terms - was also considered and rejected by the Illinois courts, apparently the second alleged incident carried no more weight than the first. In effect, therefore, the Minnesota juvenile court relitigated the facts presented to and disposed of by the Illinois courts, since the Minnesota cause of action and its subject matter, although brought in the juvenile court, constituted the same cause of action and subject matter litigated in the juvenile court, constituted the same cause of action and subject matter

litigated in Illinois. Moreover, Sarah, upon whose behalf the juvenile court proceeding was instituted, was in privity with Judith in the Illinois proceedings, i.e., Sarah's interests were closely aligned with Judith's, thereby making Judith her virtual representative. (See Johnson v. Nationwide Business Forms, Inc. (1981), 103 Ill.App.3d 631, 59 Ill.Dec. 339, 431 N.E.2d 1096.) In light of the foregoing, therefore, the Illinois courts' judgments were res judicata of the Minnesota juvenile court action.

(3) We also find that the Minnesota juvenile court lacked jurisdiction because its exercise of jurisdiction contravened the purposes underlying the UCCJA. We first note that plaintiff's reliance on Sullivan v. Sullivan (1981), 98 Ill.App.3d 928, 54 Ill.Dec. 207, 424 N.E.2d 957 - for the proposition that where another state fails to

give full faith and credit to a judgment of Illinois, Illinois nonetheless is obligated to give full faith and credit to the other state's later judgment - is misplaced under the circumstances here. At issue in Sullivan was the payment of past due support and maintenance obligations. The case before us is a custody matter. Certainly the custody of children and payment of monies require different considerations, as evidenced by UCCJA which specifically provides that a "custody determination," which includes visitation rights, does not include a decision relating to child support of any other monetary obligation of any person. (Ill.Rev.Stat. 1983, ch. 40, par. 2103.02; see also Minn.Stat.Ann.Supp. Sec. 518A.-02(b).) Accordingly, we must consider application of the full faith and credit clause in conjunction with the specific

provisions of the UCCJA and its underlying policy considerations.

As stated previously, recognition of the full faith and credit clause requires application of res judicata where the parties involved are the same, or those in privity with them, and the cause of action and the subject matter of both suits are the same. (Hays v. Louisiana Dock Co. (1983), 117 Ill.App.3d 512, 72 Ill.Dec. 687, 452 N.E.2d 1383.) The UCCJA also provides for application of res judicata (Ill.Rev.Stat.1983, ch. 40, par. 2113; see also Minn.Stat. Ann.Supp. Sec. 518A.12 (West 1989). To give full faith and credit to the Minnesota Juvenile court's judgment over Illinois' would require us to completely ignore the res judicata doctrine in contravention of the purposes of the UCCJA, three of which most importantly are to avoid continuing

controversies over child custody in the interest of greater stability in the home environment and secure family relationships for the child, to avoid harmful effects on the well-being of the child, and to avoid relitigation of custody matters. (Ill.Rev.Stat. 1983, ch. 40, par. 2102; Minn.Stat.Ann.Supp. Sec. 518A.01.) In other words, were we to hold otherwise, an unsuccessful litigant in Illinois would be free to relitigate in other state forums, after establishing a six-month residence and complying with other jurisdictional requirements of the UCCJA in those states which have adopted it, until a favorable forum was found which would interpret the same evidence before it as "significantly different" from the evidence presented in the original forum. During the interim, a minor child would be subjected to continuous instability in the

family relationship and suffer harmful effects to her well-being. This is not the same situation which would obtain and for which the UCCJA provides where new circumstances, never litigated, would arise.

[4] Accordingly, notwithstanding the general rule that where inconsistent judgments exist, the full faith and credit clause requires the latest judgment to be controlling in a third action between the parties (Treinies v. Sunshine Mining Co. (1939), 308 U.S. 66, S.Ct. 44, 84 L.Ed. 85), we believe that it is of paramount importance that where child custody and visitation rights are involved, the doctrine of res judicata must be strictly applied prior to a second forum assuming jurisdiction over such matters involving the same facts and same parties, in compliance with the purposes of the UCCJA, so that a third action between the

same parties based on the same facts cannot arise.

[5] Here, Minnesota's exercise of jurisdiction in the juvenile proceeding contravened the policy considerations for which the UCCJA was enacted; it should have declined jurisdiction under section 8 of the UCCJA (Ill.Rev.Stat.1983, ch. 40, par. 2108(c)(5), Minn.Stat. Ann.Supp. Sec. 518A.07, Subd. 3(e). Its judgment is therefore void. As a result, the Minnesota judgment rendered in the tort action on behalf of Sarah and registered in this State, which was based on the juvenile court's findings of sexual abuse of Sarah by George, is also void. See Crist v. Quam (1984), 126 Ill.App.3d 167, 81 Ill.Dec. 421, 466 N.E.2d 1223; Ill.Rev. Stat. 1987, ch. 110, par. 12-621(a)(3).

[6,7] We further find, in any event,

that Sarah was collaterally estopped from prosecuting a tort action against George in Minnesota based upon her allegations of George's sexual abuse of her. Collateral estoppel applies where the following requirements are met: (1) the issue decided in the prior adjudication is identical to that presented in the action in question; (2) the party against whom estoppel is asserted is the same as or in privity with a party to the prior adjudication. (Illinois State Chamber of Commerce v. Pollution Control Board (1979), 78 Ill.2d 1, 34 Ill.Dec. 334, 398 N.E.2d 9.) As discussed above, these requirements have been met.

In light of the foregoing, we find it unnecessary to address any other issues raised in this appeal.

The judgment of the circuit court of Cook County granting registration of the

Minnesota judgment is reversed.

REVERSED.

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

No. 87-3745

IN THE MATTER OF)
SARAH KLUMPNER, a minor, by)
RICHARD KAHN, her guardian ad Litem,)
)
Plaintiff-Appellee,)
)
v.)
)
GEORGE H. KLUMPNER,)
)
Defendant-Appellant.)

ORDER

This cause coming on to be heard on motion of plaintiff-appellee to file her petition for rehearing instanter, and the court having allowed said motion and having considered defendant-appellant's objections thereto, as well as the petition for rehearing:

IT IS HEREBY ORDERED that the petition for rehearing is denied.

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - LAW DIVISION

No. 86 L 7855

SARA KLUMPNER,)
)
Plaintiff,)
)
-vs-)
)
GEORGE KLUMPNER,)
)
Defendant,)

REPORT OF PROCEEDINGS had at the hearing of the above-entitled cause, before the Honorable Willard Lassers, Judge of said court, on the 4th day of June, 1987, at the hour of 12:00, o"clock noon.

PRESENT:

MR. EDWARD PARKS
appeared on behalf of the
Plaintiff,

MR. DAVID WALKER
appeared on behalf of the
Defendant.

THE COURT: All right. Let's go onto the ruling. Sorry you folks had to wait, but I have had a long, very long call today.

MR. WALKER: David Walker for the defendant George H. Klumptner.

THE COURT: And you are.

MR. PARKS: Edward Parks on behalf of the plaintiff.

THE COURT: Well, I am ready to rule. And you might as well be comfortable. You might as well sit down. It's going to take me some time. The matter is before me this morning for ruling. On April 9, 1986, the plaintiff filed a petition to register a foreign judgment for $325,000. In August 1986, the defendant filed an amended motion to set aside the registration of the foreign judgment, and recited the facts leading up to the judgment sought to be registered. The party subsequently filed briefs, and the

matter was argued. From the briefs and the other documents submitted on this matter, the following facts appear: On August 24, 1981, the Circuit Court of Lake County, Illinois, entered a judgment dissolving the marriage of George H. Klumpner and his wife whose name I forget. Anybody know?

MR. WALKER: Judith.

THE COURT: Judith Klumpner. The couple had one child Sara. The custody of Sara was given to Mrs. Klumpner, and Mr. Klumpner was given visitation. On September 2, 1981, the Circuit Court of Lake County entered an order setting a visitation schedule. Subsequently there was litigation in Lake County in which Judith asked for the termination of the visiting rights of George Klumpner, charging child abuse, and in particular sex abuse of the child. The husband also filed a petition on December 28,

1981, asking for a change of custody to him.

The matter finally came on for hearing on a post-decree petition before Judge Witt in Lake County, and Judge Witt entered an order which is more than an order but really a brief opinion in which he found that George, and Judith, and Sara were all in need of extended psychiatric counseling in order to effect, and I am not quoting exactly, a normal healthy relationship between George and Sara. It was found to be in Sara's best interest that her mother have custody, and then comes the critical language that there is no credible evidence that George has ever physically or sexually abused or molested Sara.

However, when she does visit with George, Sara's personality demonstrates that such visitation has on occasion caused Sara to become upset and anxious, that Judith is

personally convinced that Sara's exposure to George to visitation is detrimental to Sara. However such belief is factually unsupported by credible evidence and is irrational. Therefore the court denied George's petition for modification of custody, and directed that all three submit to psychiatric counseling. And the judge sets out the reasons for that. He sets a visitation schedule, and set the matter for hearing for status about six month hence. It appears also that one of the primary bases for the claim of sex abuse are the events that occurred on September 7, 1981.

The wife appealed from the order and on December 29, 1983, the Appellate Court for the Second District entered a rule 23 order affirming Judge Witt's order refusing to cut off visitation and also making certain other orders with respect to other matters also

before the Appellate Court. That included a contempt finding against Mrs. Klumpner entered December 21, 1982. The rule 23 order by the Second District was numbers 82-875, 83-7, and 83-129 consolidated. There the court took occasion to say that Judge Witt had abused his discretion and so forth based upon the facts. But the Appellate Court after reviewing the facts at some length concluded at page three, the accusation of sexual molestation of Sara by George was serious. The trial court expressly found no credible evidence that George has ever physically or sexually abused or molested Sara. Particularly where the question is such a sensitive and serious nature and the evidence is conflicting, we realize that the trial court is in a far better position than we to determine the credibility of witnesses. So on that basis the court affirms Judge

Witt's order. And it's in that opinion that we find a discussion of the events of September 7, 1981, the primary events relied upon by Mrs. Klumpner.

Now the scene shifts from Illinois to Minnesota. Following the divorce, Mrs. Klumpner and her child moved to Minnesota, to Minneapolis, and there were various proceedings in the Minnesota courts. The first proceedings was in the Family Court Division of the District Court County of Hennepin. This was a proceedings in which Judith sought to restrain George from exercising his rights of visitation pursuant to the Illinois decree. The court found that Minnesota has jurisdiction, and cited a provision of the Minnesota statutes, see page three. But the court continued, however, it does not have primary jurisdiction since the State of Illinois has not lost jurisdiction

as affirmatively held, that it exercised its jurisdiction and is a court of competent jurisdiction to hear the matter. Therefore there was an order entered February 1, 1982, that that court, that is the juvenile court hereby declines to exercise jurisdiction and the proceeds are dismissed subject to the right of the Illinois court to request this court, that is the juvenile court to take such evidence as it deems necessary and proper. And so forth. This order was entered about five months, four months after the order entered by Judge Witt of October 1, 1982.

We now jump ahead about two years in time to July 26, 1984. And this is now a proceedings in the juvenile court. And it's a disposition order in that court. And Mr. Klumpner was represented by an attorney David W. Skogerboe, S-k-o-g-e-r-b-o-e, who

appeared as counsel and withdrew after presenting the respondent father's written statement. So it's clear that he was new at the proceedings. He had an order and he could have participated, but he elected to simply file the written statement, and then the lawyer withdrew. The opinion incorporates certain findings of fact dated April 25, 1984. The child is ordered to remain in the custody of the mother. The mother has to provide certain psychological services for the child. And in effect, visitation with the father was cut off, and the court stated at paragraph three, page three, before the court will consider reuniting the child with her father, through either supervised or unsupervised visitation, the following case plan must be complied with. Father had to go through a psychological evaluation, and there are all, a number of other steps were set out

in the order.

We come now to the findings of fact that I mentioned previously. And the findings of fact include a statement that the father subsequent to the marriage had undergone-- no, had problems with the abuse of alcohol and drugs. That following the birth of Sara, that Klumpner began to drink heavily, use drugs, involved in pornography and so on. And then there are various statements about the father's abnormal sexual interest in Sara, and a lengthy statement most adverse to the father about the events that occurred particularly on, prior to and on September 7, 1981, when the child was visiting with the father at a Best Western Hotel in Minneapolis, and the powerful effects of that visit. Then on paragraph 14 there is a lengthy recital about a second -- a visit on September 6, 1982, where there is a finding

that of improper behavior on the part of the father with respect to the child.

Finally there was an order that Sara was adjudicated dependent and neglected. The father was barred from all visitation and so. Ncw, finally there is a memorandum attached to the April order, and the second page of that memorandum states, finally it is noted that this court has reached a contrary conclusion to that reached in Illinois shortly after the second episode in September of 1982. While it is argued by respondent that the Illinois court reached its decision while the evidence was still fresh, the intervening period of time has produced significant differences in evidence presented at the tow hearings, not the least of which that Dr. shapiro's testimony regarding what he was able to learn from Sara after nine sessions with her subsequent to the Illinois

hearing.

The evidence presented to this court in February of 1984, is sufficiently convincing under the applicable standard of proof to lead this court to conclude that Sara was abused by her father. So in effect we have a situation where the Minnesota court has rejected the findings of the Illinois court based upon the same incidents. It was unclear to me whether Judge Witt in his order of October 1, 1982, had considered the September 1982 incident. As I read his order, he was considering only the 1981 allegations. But judge -- the judge in Minnesota indicates that he considered, he, Judge Witt considered the September 1982 allegations as well. So I am willing to take it on that basis.

Finally we come to the third court proceedings, and that is the one that occurs,

leading up to the entry of judgment. Now, that is the judgment for $325,000 that was entered by the District court for the Fourth Judicial District on June 21, 1985, in which there was summary judgment as to liability entered against George Klumpner based upon the juvenile court findings, and compensatory damages were sought by Sara Klumpner, a minor by Richard Kahn, K-a-h-n, her guardian ad litem against her father George Klumpner. And in addition of that there was an award of $100,000 for exemplary damages. And there is no question that George was represented by counsel in that proceedings. And indeed he appeared both in that proceedings and in the juvenile court proceedings.

Now on April 7, 1987, I had a hearing on the motion to set aside the registration. And after colloquy with counsel, I asked that counsel just submit a supplemental memorandum

on four separate questions. And the questions were as follows: One, did the husband appear in the district court case. Two, in the juvenile court case and in the district court, did the husband raise the question of full faith and credit in Minnesota of the Illinois judgment. Three, is Sara precluded by the Illinois judgment. And four, did the district court grant summary judgment to Sara as to liability.

Both parties made additional submissions, and I have considered both the original submissions and the supplemental submissions. Of course the foundation stone of this case is the claim by the plaintiff Sara here that this court is without authority to go behind the judgment of the Minnesota court pursuant to the full faith and credit clause which is Article 4, Section 1 of the constitution of the United States.

The first issue raised by the defendant here is that the juvenile court lacked subject matter jurisdiction. And this rests simply on the declaration by the family court in 1982 to the effect that Illinois had primary jurisdiction. And hence the argument goes that the Illinois court may inquire into the question of the jurisdiction of the juvenile court. Two cases are cited in support of that proposition. One is Finley, 105 Illinois 3rd, 1. First district 1982. Finley however, really doesn't go to that proposition. Finley is simply a traditional estoppel case. Finley involved the Finley who is the, at one time, the owner of the Chicago White Sox. There had been some litigation in the Indiana courts in which Finley had made certain statements or taken a certain position. It was held in subsequent Illinois litigation he was bound by the

statement or the position that he took there, and he couldn't take a different position in the Illinois court.

The other case cited by the defendant is Schneider, 89 Illinois Appellate 3rd, 904, first district, 1980. The Schneider case, however, is not a question of subject matter jurisdiction of the court. It is a question of the personal jurisdiction of a New York court under the New York long arm statute. And the court there, our court held simply that the judgment entered into in New York was void because there was inadequate contacts with New York on the part of the defendant so that New York did not acquire jurisdiction over the person of the defendant sufficient to enter and impose judgment.

But apart for those cases, it may be that there is a basis for such a claim. I suppose that to take the extreme case of subject

matter jurisdiction, if we had a situation, let us say, where somebody came into this court and said that I have a divorce decree that was entered by the tax court of the United Sates, it would be inappropriate for this court to say, well, the tax court of the United States lacks subject matter jurisdiction to grant divorces. Its function is to adjudicate claims on income taxes as between the United States and taxpayers. So that the tax court lacks subject matter jurisdiction. But in no sense can we say that the juvenile court lacked subject matter jurisdiction in that sense. The family court had previously determined two years previously as a matter of its decision that it, the family court had jurisdiction, but that Illinois had a superior right to jurisdiction. But that is a far cry from saying that the juvenile court as such lacked subject matter jurisdiction.

And there is no claim made to that event. In any event, that is an issue that could have been and should have been raised in the juvenile court at that time.

The defendant at page six of his original brief argues that he can raise the inference of fraud and the procurement and lack of subject matter jurisdiction. Well, there is no doubt about that. But there is really no claim made here of the fraud and of the procurement of the judgment, nor is there a claim made of lack of personal jurisdiction over the person.

The defendant originally asked this court to be allowed in effect to relitigate the issues that had been litigated already in Minnesota, but I must say that the law is strongly to the contrary and that except for the very -- to the very limited extent that I have already indicated, this court lacks

authority to go behind the Minnesota judgment.

The third claim that was made originally is this: That Minnesota should have given full faith and credit to the Illinois determination, that Minnesota failed to do so, and that therefore Illinois need not give full faith and credit to the Minnesota judgment. This I think is a much more serious matter, and that contention I will consider subsequently.

Let me turn now to the answers to the four questions that I had inquired about. Question number one was, did the husband appear in the district court, and the answer to that is unqualified yes. There is no dispute about that. The second question, did the husband raise the full faith and credit argument in the district court or juvenile court, again the answer is yes. The third

question is, is Sara precluded by the Illinois judgment. And there we have a difference of opinion. The defendant says, yes. And the plaintiff says, no. And the reason the plaintiff says no is that the plaintiff contends that Sara was not a, quote, party, in the technical sense to the Illinois proceedings. And it appears from documents submitted to me that Judge Witt declined to appoint a guardian ad litem for Sara in Lake County. That was Defendant's Exhibit J., but that an attorney for Sara was appointed pursuant to the Defendant's Exhibit A. This question of course is a critical question to the third argument advanced by the defendant in the initial brief. The reason for that is that if Sara was -- is not bound -- was not a party to the Illinois proceedings, a party in the technical sense, then clearly she would not be bound by the

Illinois judgment and whatever issues she wanted to raise in Minnesota she would be free to raise. And we would not have any problems of full faith and credit. The defendant further claims that Sara and her mother were in privity.

For purposes of the remaining portion of this opinion, I am prepared to assume that Sara is bound by the Illinois judgment. I am not convinced of that, but I am prepared to assume. In addition, I am prepared to assume that Judge Witt on October 1, 1982, did indeed have before him and considered the contentions of the mother with respect to conduct in September of 1982. The reason, although again, the fact situation on that, on this record is not clear, but I am going to assume that he did. If you -- if Judge Witt did not consider the September 1982 events claimed to have occurred by the

mother, then of course those were matters that were never addressed by the Illinois court so that there is no problem of full faith and credit under Article 4, Section 1. And the whole question as to at least as to that portion of the judgment as to full faith and credit is inapplicable. And we don't have to ask ourselves the question whether Sara was or was not a party in the technical sense to the Illinois proceedings.

So I come now to the final portion of my focus. And that is on the question of whether this court, that is the proceedings that I now have before me -- I'm sorry. I lost my train of thought.

(WHEREUPON THE REQUESTED PORTION OF THE RECORD WAS READ)

THE COURT: The question therefore that I found that raised a serious question was this: George Klumpner contends that if the

Minnesota court disregarded and failed to give full faith and credit to the Illinois judgment, then I am at liberty to disregard it and not give full faith and credit to the Minnesota judgment. That is the nub of the contention made by George Klumpner. And neither party cited cases on that proposition. And I did some research myself in the library, and I found a case that I think is squarely in point on this issue. And that case -- get me 9 Appellate Third, would you, that is Sullivan against Sullivan, 9 Appellate Third 928, third district 1981.

There we had post-decree litigation with respect to child support. The wife is in Illinois. And the ex-husband had moved to Ohio. And there were various child support orders and maintenance orders entered by the Illinois courts. The matter then was referred to the Ohio courts under URESA, the

Uniform Reciprocal Enforcement of Support Act. And although the matter had been litigated in Illinois, the Ohio court set a different order and declined to follow the Illinois order. And so the matter then came back ultimately to the Illinois courts, and we were presented so -- not we. The Third District Appellate Court was presented with essentially the significant question presented by this case, namely, if the foreign court fails to give full faith and credit to an Illinois decision, nevertheless must the Illinois court give full faith and credit to the decision of a foreign court. That is the issue. The Sullivan court said in 931, we do note, however, that Ohio may well have denied the 1978 Illinois order full faith and credit. It is generally established that one state must recognize a sister state's judgment to the decree that it

is non-modifiable. Then at 932, the Ohio court should have referred to section 510 of our statutes.

In the case at bar, however, the Ohio court modified the Illinois decree within two months of the Illinois decree upon the same set of circumstances which had become res judicata. By refusing to recognize our rules regarding modification, the Ohio court modified a judgment which was not subject to modification in Illinois. Now comes the critical language. Nevertheless even though we believe that the Ohio court may have failed to give our 1978 decree full faith and credit, we are required to give full faith and credit to Ohio's judgment. Any objections Mary had regarding the Ohio modification should have been directly appealed in Ohio and not collaterally attacked as she attempts to do here.

Now I am going to skip some language. Although a minority of jurisdiction hold that where the third action returns to the first forum as in the case at bar, the latest judgment does not control if the second forum refused to give the first forum's judgment full faith and credit, case citations omitted. These holdings are clearly inconsistent with Treinies and demonstrates the parochialism that the full faith and credit clause was intended to prevent with citations.

For this reason the Circuit Court was correct in recognizing the more recent 1978 Ohio decree with respect to past due non-modifiable support and maintenance obligations. And then there is further discussion. But the Appellate court decision is squarely on point. I Shepardized that case. And it is the only case in Illinois that I found

that deals with the problem. And I think it is binding.

So that being the case, for the reasons that I have given, I am going to deny the motion to set aside registration. All right. Thank you.

89-1086

Supreme Court, U.S.
FILED
JAN 3 1990
JOSEPH F. SPANIOL, JR.
CLERK

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1989

SARAH KLUMPNER, a minor, by
RICHARD KAHN, her Guardian ad Litem,

Petitioner

V.

GEORGE H. KLUMPNER

Respondent

ON WRIT OF CERTIORARI FROM THE
ILLINOIS SUPREME COURT

PETITIONER'S APPENDIX
Volume Two

DANIEL W. SCHERMER
Attorney for Petitioner
1600 Foshay Tower
Minneapolis, MN 55402
(612) 333-4690
Attorney Reg. No. 96556

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STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

FAMILY COURT DIVISION

In Re The Custody of	)	
	)	
Sarah Nicole Klumpner	)	File No. 92288
	)	
Judith K. Klumpner	)	
	)	
Petitioner,	)	FINDINGS & ORDER
	)	
vs.	)	
	)	
George H. Klumpner,	)	
	)	
Respondent.	)	

The above-entitled matter came on for hearing before the undersigned, one of the judges of the above-named Court, on the 12th day of January, 1982, at the Hennepin County Government Center, City of Minneapolis, State of Minnesota.

Barbara L. Heck, Esq., appeared for and on behalf of the petitioner. Franz P. Jevne, Esq., appeared for and on behalf of the

respondent.

Based upon all the files, records and proceedings herein, the Court makes the following:

FINDINGS OF FACT

I

That petitioner obtained an ex parte restraining order of this Court on October 5, 1981, signed by Judge Eugene Farrell which restrained and enjoined the respondent from visitation as contained in the amended Judgment and Decree for Dissolution of Marriage filed in the Circuit Court of the 19th Judicial District, Lake County, Illinois, which had been filed on August 24, 1981.

II.

That said Order was based upon petitioner's affidavit alleging an emergency existed which created an immediate threat to the

physical and emotional health of the minor child under Minnesota Statutes Annotated 518A.03, Subd. 1, Subsection (c)(2).

III

That the Affidavit in support of the ex parte restraining order issued by Judge Farrell on October 5, 1981, was based on the allegation by the petitioner that there was sexual abuse to the minor child of the parties by respondent during his visitation in Minnesota with the minor child on September 7, 1981.

IV

That Minnesota Statutes Annotated 518A.14, Subdivision 1, states as follows:

> If a court of another state has made a custody decree, a court of this state shall not modify that decree unless (1) it appears to the court of this state that the court which rendered the decree does not now have jurisdiction under jurisdictional prerequisites substantially in accordance with sections 518A.01

to 518A.25 or has declined to assume jurisdiction to modify the decree and (2) the court of this state has jurisdiction.

That Minnesota Statutes Annotated Section 518A.03, Subd. 1 (c) states as follows:

> The child is physically present in this state and (1) the child has been abandoned or (2) it is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse or is otherwise neglected or dependent.

That Minnesota Statutes Annotated Section 518A.03, Subd. 1 (d) states as follows:

> It appears that no court in another state would have jurisdiction under prerequisites substantially in accordance with clauses (a), (b), or (c), or a court of another state has declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child, and (2) it is in the best interest of the child that a court of this state assume jurisdiction.

That Minnesota Statutes Annotated Section 518A.03, Subd. 2 states as follows:

> Except under clauses (c) and (d) of Subdivision 1, physical presence in this state of the child, or of the child and one of the contestants, is not alone sufficient to confer jurisdiction on a court of this state to make a child custody determination.

The Court finds that the Illinois Court has not lost jurisdiction as respondent is still an Illinois resident. In fact, both parties have appeared before the Illinois Court on September 2, 1981, and the Court granted respondent specific visitation rights, including the visitation on September 7, 1981.

That after these proceedings were commenced by petitioner in this Court in Minnesota, the respondent filed a petition for change of custody on November 19, 1981, in the Illinois Circuit Court and petitioner filed a motion to dismiss the action for lack of jurisdiction.

The Illinois Court, on December 28, 1981,

held that it had paramount jurisdiction as opposed to Minnesota, and was exercising its jurisdiction.

V

The Court finds that Minnesota has jurisdiction in this matter under M.S.A. 518A.03, Subd. 1(c). However, it does not have primary jurisdiction since the State of Illinois has not lost jurisdiction, has affirmatively held that it will exercise its jurisdiction and is a court of competent jurisdiction to hear the matters contained in M.S.A. 518A.03, Subd. 1(c). See Landa v. Norris, _____ N.W.2d _____, Finance and Commerce, December 24, 981, a copy of which is hereto attached.

VI

Minnesota Statutes Annotated 518A.20, Subd. 2, states as follows:

> Upon request of the court of another state the courts of this state which are competent to hear custody matters may order a person in this state to appear at a hearing to adduce evidence or to produce or give evidence under other procedures available in

> this state for use in a custody proceeding in another state. A certified copy of the transcript of the record of the hearing or the evidence otherwise adduced and any social studies prepared shall be forwarded by the clerk of the court to the requesting court.
>
> A person within this state may voluntarily give his testimony or statement in this state for use in a custody proceeding outside this state.
>
> Upon request of the court of another state a competent court of this state may order a person in his state to appear alone or with the child in a custody proceeding in another state. The court may condition compliance with the request upon assurance by the other state that state travel and other necessary expenses will be advanced or reimbursed.

This Court finds that the Illinois Court has primary jurisdiction to resolve the issues between the parties. The allegations of the abuse to which a child may have been subjected to in the State of Minnesota during respondent's visitation can be submitted to

the Illinois court pursuant to M.S.A. 518A.20, Subd. 2.

Under M.S.A. 518A.20, the Court in Illinois may request this Court to hold an evidentiary hearing in reference to the need for protective orders regarding visitation; the need for altering visitation or the need for testimony in reference to respondent's motion pending in Illinois for a change of custody.

That under Subd. 2 of M.S.A. 518A.20, the petitioner and her witnesses may voluntarily give their testimony in this state for use in a custody proceeding outside this state, and therefore such testimony could be submitted to this court for use in the proceedings in Illinois regarding custody and visitation.

Any verification in reference to the respondent would require verification in the State of Illinois for future child visitation

and any limitations on visitation handled by the Illinois Court since he is within that Court's jurisdiction and subject to its powers of contempt.

VII

That respondent's motion for attorney's fees should be denied since the issues submitted for determination are in the best interest of the child and should be addressed by a court of competent jurisdiction.

ORDER

The Court hereby declines to exercise jurisdiction in this matter and the proceedings herein are dismissed subject to the right of the Illinois Court to request of this Court to take such evidence as it deems proper and necessary, and further subject to the petitioner on motion presenting such evidence as she deems proper to be submitted to the Court of Illinois for its considera-

tion in the matters pending before this court.

It is hereby ordered that respondent's motion for attorney's fees is hereby denied.

It is hereby ordered that a copy of this Order be sent to the attorneys of record for service on their clients with an Affidavit of Service to be filed with the Clerk of Court's Office.

BY THE COURT:

/s/ Delila F. Pierce
Delila F. Pierce
Judge of District Court

Dated this 1st day
of February, 1982.

STATE OF ILLINOIS)
)
COUNTY OF LAKE)

IN THE CIRCUIT COURT OF
THE NINETEENTH JUDICIAL
CIRCUIT, LAKE COUNTY,
ILLINOIS

IN RE: THE MARRIAGE)
)
Klumpner) CEN. NO. 80D1638
and)
Klumpner,)

ORDER

CIRCUIT CLERK

This cause coming on to be heard upon hearing upon a return of a rule to show cause; for a change of custody and for an order directing 50% contribution from Judith Klumpner for a 1979 federal tax deficiency, the court having heard the argument of counsel and finding the Judith Klumpner personally absented herself in spite of having been served with a notice to produce, It is hereby ordered:

1) Petition for fees of Stephen Katz is continued to 4/28/82.

2) Hearing on Petition for a change of custody is continued to April 2, 1982 at 9:00 a.m.

3) The court finds Judith Klumpner in contempt of court for her willful failure to furnish visitation with the minor child to George Klumpner and hereby issues a body attachment against Judith Klumpner and stays execution of same until April 2, 1982.

4) Richard Rinella's oral motion for the appointment of a guardian ad litem for the minor child is denied.

5) George Klumpner's petition for contribution to an IRS tax deficiency is granted and Judith Klumpner is hereby ordered to pay George Klumpner the sum of $232.58 which said sum may be deducted from child support payments.

6) Judith Klumpner is directed to file responsive pleadings within 7 days from the date hereof.

ENTER:

/s/Alphonse Witt
JUDGE

Dated at Waukegan, Illinois this
19 day of March, 1982.

STATE OF ILLINOIS	)	
	)	ss
COUNTY OF LAKE	)	
		IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT, LAKE COUNTY, ILLINOIS
IN RE THE MARRIAGE	)	
	)	
OF	)	
	)	
JUDITH K. KLUMPNER	)	NO. 80 D 1638
	)	
AND	)	
	)	
GEORGE KLUMPNER	)	

ORDER

This cause coming on to be heard on various Petitions heretofore filed by both parties and all culminating in a hearing which commenced on August 5, 1982, and was continued to and concluded on September 21, 1982, and the Court being fully advised finds:

That George, Judith Klumpner and the minor child, Sarah, are all in need of

extended psychiatric counseling with the direct objective of effecting a normal, healthy relationship between George and his daughter, Sarah;

That under the existing circumstances, there is not serious endangerment to Sarah if she continues in the custody of Judith and it would be in Sarah's best interest to so continue;

That there is no credible evidence that George has ever physically or sexually abused or molested Sarah; however, when she does visit with George, Sarah's personality demonstrates that such visitation has, on occasion, caused Sarah to become upset and anxious;

That Judith is personally convinced that Sarah's exposure to George, through visitation, is detrimental to Sarah; however, such belief is factually unsupported by credible

evidence and is irrational.

IT IS THEREFORE ORDERED:

That George's Petition for Modification of Custody is denied;

That George, Judith and Sarah Klumpner all submit themselves to extended psychiatric counseling with the primary objective of promoting a healthy, father-daughter relationship between George and Sarah;

That George enjoy, in Cook County, the following visitation with Sarah;

1. November 26, 27 and 28 of 1982, from 10:00 a.m. until 7:00 p.m. each day;

2. December 30 and 31 of 1982, and January 1 and 2, of 1983, from 10:00 a.m. until 7:00 p.m. each day.

Travel expenses for transportation to and from Illinois shall be solely the responsibility of Judith;

3. George may, if he chooses, visit with Sarah in the State of Minnesota on one other Saturday

each month between the hours of 9:00 a.m. until 7:00 p.m., provided he notifies Judith of his intended visit at least 7 days in advance.

That this cause be set for status as to the progress of the above-ordered counseling and also as to visitation on February 11, 1983, at 9:00 a.m. in Room C-404;

That in all other regards the Petitions of the parties' are denied.

ENTER:

/s/ Alphonse F. Witt
Alphonse F. Witt,
Associate Judge

Dated at Waukegan, Illinois
this 1st day of October, 1982.

cc: Richard Rinella, Esquire
One North LaSalle Street
Chicago, Illinois 60602

Mr. Frank G. Roux
305 Washington Street
Waukegan, Illinois 60085

STATE OF ILLINOIS)
)ss
COUNTY OF LAKE)

IN THE CIRCUIT COURT OF
THE NINETEENTH JUDICIAL
CIRCUIT, LAKE COUNTY,
ILLINOIS

IN RE: THE MARRIAGE OF)
)
JUDITH K. KLUMPNER) GEN. NO. 80D1638
AND)
GEORGE KLUMPNER)

ORDER

This cause coming on to be heard on all pending matters, and the court being advised that there remains pending a certain juvenile proceeding in the courts of Minnesota,

It is hereby ordered that all pending matters are continued generally until further notice.

ENTER:

/s/ Emilio Santi
JUDGE

Dated at Waukegan, Illinois this
28th day of February, 1983.

APPENDIX C-3

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT
JUVENILE COURT DIVISION

Sarah Klumpner, a minor,
by Richard Kahn, her
guardian ad litem,

Plaintiff,

vs.

George H. Klumpner,

Defendant.

ORDER AND
MEMORANDUM

D.C. #128101-97
D.C. #796654

The above-entitled matter came duly on for hearing before the Honorable Allen Oleisky, judge of the above-named Court on th· 30th day of March, 1983 at 326 Court House, City of Minneapolis, County of Hennepin, State of Minnesota.

APPEARANCES WERE AS FOLLOWS:

Irvin E. Schermer, Esq., appeared for and on behalf of the Plaintiff, Sarah Klumpner, a minor and her Guardian ad Litem, Richard

Kahn.

Franz P. Jevne, III, Attorney at Law, appeared for and on behalf of Defendant, George H. Klumpner.

Upon the motions of Defendant and his attorney, Franz P. Jevne, and upon all the records, files and proceedings herein, together with the legal memoranda, the Court hereby makes the following Order:

IT IS HEREBY ORDERED:

1. That Richard Kahn, as Petitioner in the dependency/neglect proceedings, is hereby granted twenty days leave of the Court to amend the Petition alleging dependency/neglect, so as to conform with Minn. Stat. Section 260.131.

2. That Richard Kahn, as Guardian ad Litem, is hereby dismissed and that there shall be a new Guardian ad Litem appointed to protect the interests of the minor child,

pursuant to Minn. Stat. Section 260.155(4)(c).

3. That until such time that a full evidentiary hearing on the issues of dependency and neglect is heard, all protective orders precluding Judith Klumpner from delivering the person of the minor child to the Defendant, and precluding the Defendant from taking delivery of the person of the minor child, shall remain in full force and effect.

4. That the previous Order of this Court dated December 23, 1982 ordering default judgment is hereby stayed and Defendant is granted leave of Court to submit a verified Answer to the Complaint alleging an assault on the minor child.

5. Provided Defendant submits a verified Answer, the Order dated December 23, 1982 will thereby be vacated.

6. Should Defendant fail to interpose a verified Answer to the Complaint in the personal injury matter as set forth above, Plaintiff shall, nonetheless, give to Defendant the three day notice of application for default judgment required by Minnesota Rule of Civil procedure 55.01(2), and shall furnish a bond under the Minnesota Rules of Civil Procedure 55.01(4) as required by the Court which shall hear the application for default. Said personal injury matter shall be proved up before a judge of the regular District Court panel.

7. That each of Defendant's motions not specifically dealt with above are hereby denied.

8. That the attached memorandum shall be made a part of this Order.

BY THE COURT:

/s/ Allen Oleisky
Allen Oleisky
Judge of District Court
Juvenile Court Division

Dated this 5th day of July, 1982.

MEMORANDUM

The primary questions presented on review are whether the Court's order for default judgment should be vacated, whether the entire action should be dismissed for lack of subject matter and personal jurisdiction, and whether the action should be dismissed by reason of res judicata and collateral estoppel.

The present case involves allegations of sexual abuse of a minor child within the State of Minnesota. Under these circumstances, jurisdiction over the subject matter of this type of action rests on Minn. Stat. Section 260.111. This statute gives

the Juvenile Court original and exclusive jurisdiction over neglected and dependent children within the Sate of Minnesota.

The Court also has jurisdiction over the subject matter and personal jurisdiction in that the action was initiated as a tort action. Minn. Stat. Section 543.19. The Complaint alleges an assault occurring within the state and by virtue of Defendant's failure to answer, the allegations are admitted.

The protective order issued in the present case is a valid exercise of the court power. When a child is found to be dependent or neglected within the state, the state is not required to give full faith and credit to the custody decisions of a foreign state. In Re Longseth, 282 Minn. 28, 162 N.W.2d 365 (1968). In addition, the Court has authority to answer a protective order when a plaintiff

is threatened with irreparable harm. Harris Stanley Coal and Land Company v. Chesapeake and Ohio Ry. Co. 154 F.2d 450 (6th Cir. 1946).

Defendant's appearance on November 24, 1982 also acts as a consent to jurisdiction over his person. State v. Rust 98 N.W. 2d 271 (Minn. 1959).

Defendant argues that the action must be dismissed on the grounds of res judicata and collateral estoppel. The minor child Plaintiff in this case was not a party to the Family Court proceeding in Minnesota nor to the child abuse hearing in Illinois. The presiding judge in Illinois denied a motion for appointment of a Guardian ad Litem. Thus, the minor child was not represented in the Illinois child abuse proceedings.

It is axiomatic that unless a person is a party to the cause and as such possess a

voice in the proceedings, he/she cannot be bound by the results of the litigation. Midland Loan Finance Co. v. Lorentz 209 Minn. 278, 296 N.W.2d 911 (1941) (concurring opinion). Moreover, it appears that some improprieties existed in the appointment and use of Dr. Petrauskas as a court appointed psychiatrist in the Illinois court action so as to cast doubt upon the issue of child abuse being fully and fairly litigated.

Finally, it appears to the Court that there may have been some legitimate confusion on the Defendant's part or legitimate reasons for failing to submit an Answer to the personal injury claim and therefore in the interests of justice, the Court hereby provides for vacation of the default judgment consistent with this Order.

A.O.

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

JUVENILE DIVISION

In the Matter of the Welfare)
of:)
SARAH KLUMPNER) File No.
) 128101-97
) ORDER

The above-entitled matter came on before the undersigned on the 2nd day of February, 1984, upon Respondent-Father's motion for an order of this Court as follows:

1. Dismissing the petition for dependency and neglect for lack of jurisdiction.

2. Vacating all protective orders restraining Judith Klumpner Schermer from

delivering the minor child to George Klumpner.

3. Ordering Judith Klumpner Schermer to deliver answers to interrogatories previously served on her.

4. Requiring Judith Klumpner Schermer to pay attorney fees and expenses necessitated by her not having answered interrogatories.

Irvin E. Schermer, Esq., appeared as counsel on behalf of the Petitioner and the Minor Child; Wright S. Walling, Esq., appeared on behalf of the Guardian ad Litem; David W. Skogerboe, Esq., appeared on behalf of the Respondent-Father.

The Court having considered the argument and memoranda of counsel, and based upon all the files, records, and proceedings herein,

IT IS HEREBY ORDERED:

1. That Respondent-Father's motion

for an order dismissing the petition for lack of jurisdiction is hereby denied.

2. That Respondent-Father's motion for an order vacating all protective orders restraining Judith Klumpner Schermer from delivering the minor child to George Klumpner is hereby denied.

3. That Judith Klumpner Schermer is hereby ordered to answer Respondent-Father's interrogatories on or before February 6, 1984, unless she makes herself available for deposition prior to that date.

4. That Respondent-Father's motion for attorney's fees and expenses is hereby denied.

BY THE COURT:

/s/ H. Peter Albrecht
H. Peter Albrecht
Judge of Juvenile Court

Dated: February 3, 1984.

MEMORANDUM

Hennepin County Juvenile Court has subject matter jurisdiction pursuant to Minnesota Statute 260.111 as indicated in the order of the Honorable Allen Oleisky, dated July 5, 1983. The question presented by the respondent in bringing this motion at this time is whether or not the Uniform Child Custody Jurisdiction Act gives Illinois "primary" jurisdiction. It is not entirely clear to this Court that the Uniform Child Custody Jurisdiction Act applies in the instant case since the stated purpose of the act is to avoid relitigation of custody decisions of other states and to avoid jurisdictional competition between states in matters of child custody. MS 518A.01. The case before this Court is not one of child custody. The child's mother was granted custody in Illinois and none of the parties

are seeking an order from this Court that would change that custody order. In this respect the instant case is distinguished from Landa v. Norris, 313 N.W.2d 423 (1981) and In re Mullins, 28 N.W.2d 56 (1980), both of which involved litigation of the central issue of custody.

Even assuming that the Uniform Child Custody Jurisdiction Act applies, this Court still has jurisdiction to hear this matter since it is the "home state" of the child. MS 518A.03 (subd. 1) (a). Furthermore, it is in the best interests of the child that a court of this state assume jurisdiction because the child and at least one contestant have a significant connection with the state, and there is available in this state substantial evidence concerning the child's present and future care, protection, training, and personal relationship. MS

518A.03 (subd. 1) (b).

Finally, even if the relief sought in the present action were to be considered a modification of a custody decree under the Uniform Child Custody Jurisdiction Act, the record before this Court indicates that the Illinois Court has specifically stayed further proceedings in that state until resolution of the Hennepin County proceedings and there have been no visitation rights granted the respondent-father since February 25, 1983.

Judith Klumpner Schermer has been ordered to answer respondent's interrogatories on the basis of this Court's having determined that she is, in essence, a "party" to the proceeding. This determination is based upon Rules 39, 40, 42, and 43 of the Rules of Procedure for Juvenile Courts and upon MS 260.135 (subd. 1) and MS 260.155 (subd. 2,

6). It appears that Mrs. Schermer was initially represented by the office of Richard Saliterman at the inception of these proceedings and was represented by John F. Alden of his office at the default hearing before the Honorable Allen Oleisky held December 23, 1982. Therefore, service of the interrogatories upon Richard Saliterman was sufficient to require her response. Respondent's request for attorney's fees in regard to his motion to compel answers has been denied because this motion was by agreement of the parties combined with his motion for dismissal and thus did not necessitate an additional court appearance.

HPA

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT
IN JUVENILE COURT

In Re the Matter of the Welfare of	)J.C. File No.)127101-97
SARAH KLUMPNER	)D.C. File No.) 796654) FINDINGS OF FACT) CONCLUSIONS OF) LAW, AND ORDER

The above-entitled matter came on for trial before the undersigned; one of the Judges of the above-named court, on February 13, 14, 15, 16, 17, 23, and 24, 1984.

The matter originally appeared pursuant to an amended petition filed by Petitioner, Richard Kahn, maternal uncle of the minor child herein, alleging dependency and neglect pursuant to Minnesota statute. Counter-Petition was filed during the course of the proceeding by the father, George H. Klumpner,

also alleging dependency and neglect but on other grounds.

Irvin E. Schermer, Esq., on behalf of the Petitioner, and on behalf of the minor child;

David Skogerboe, Esq., on behalf of Respondent George H. Klumpner;

Wright S. Walling, Esq., on behalf of Patricia Hill, court-appointed guardian ad litem;

Judith Schermer, mother of the minor child, appeared throughout the trial pro se.

Also present in court during portions or all of the trial were Richard Kahn Petitioner; Daniel Schermer, stepfather of the minor child; Patricia Hill, court-appointed guardian ad litem; Barbara Kahn, Maternal grandmother of the minor child; and Enger Olson Klumpner, paternal grandmother of the minor child.

On all of the files, records, proceedings

herein, the testimony adduced at trial and the arguments of counsel, the Court being fully advised in the premises, makes the following:

FINDINGS OF FACT

1. George H. Klumpner and Judith Schermer were married in the state of Illinois on September 13, 1969. The minor child, Sarah, was born to them on December 31, 1978. They were divorced on July 8, 1981.

2. Prior to the marriage of the parents and specifically during periods prior to the birth of Sarah, the Respondent Father, George H. Klumpner, had undergone psychiatric and psychological evaluation and treatment by a number of persons. During that period of time, the use and abuse of alcohol and drugs was a contributing factor to many of his psychological problems.

3. Following Sarah's birth, George H. Klumpner began to drink heavily and was frequently intoxicated, engaged at various times in the use of drugs, and evidenced interest in pornography, including child pornography. This interest in pornography became one of the major aspects of his personality.

4. George Klumpner began to exhibit abnormal sexual interest in Sarah and this, along with his dreams about killing Sarah, his physical abuse of the infant, and the mother's fears for both her safety and that of the child, contributed to the mother's decision to leave the Respondent Father and move from Illinois to Minnesota with the child. Sarah and her mother now reside in Hennepin County, Minnesota.

5. Immediately prior to her departure from Illinois, Judith Schermer instituted

divorce proceedings against George Klumpner in the Circuit Court of Lake County, Illinois, which thereafter granted the dissolution and gave legal custody of Sarah to Judith, subject to various visitation rights of the Respondent. During the course of these proceedings, numerous court hearings were held and substantial hostility and conflict arose between the parties over all issues, including visitation.

6. Between September 26, 1980 and September 2, 1981, visitation between Respondent and the minor child was limited to "day only" visits in the presence of at least one of his parents. Following miscellaneous hearings and arguments, this order was changed by order dated September 2, 1981 and at that time, Respondent was permitted visitation rights in Minnesota during the entire period from 6:00 p.m. on September 4,

1981 and returned her at 2:00 p.m. on September 7, 1981.

8. During the period of visitation, Respondent and the child stayed at the University Inn, a "Best Western" motel, in Minneapolis, Minnesota. When Respondent returned Sarah from the visit, Sarah's hair was wet and matted, she appeared dazed and stared vacantly, and would not respond to her mother's questions. Shortly thereafter the child informed her mother that the father had hurt her vagina while she was "crouching" in the motel bathtub, and that he had been wearing a necklace and shirt, but no pants.

9. On September 8, 1981, Sarah was brought to the office of a pediatrician where, as a result of examination, his records reflect a complaint by the child that "Daddy hurt my vagina." An examination by a gynecologist revealed that the hymen was

intact at that time.

10. Following the visit in September, 1981, the child began to have substantial regression in her behavior, including night fears, bedwetting, lack of toilet control, and crawling rather than walking. While on a trip to the North Shore of Lake Superior in late September, 1981, Sarah became hysterical when taken to a "Best Western" motel with a "Crown" logo in front. She stated it was "daddy's motel" and asked if he was going to come and hurt her.

11. As a result of continued regression and traumatized behavior following that visit with the father, the child was taken by the mother to see Dr. Stanley W. Shapiro, a child psychiatrist, for medical attention. At Dr. Shapiro's initial interview with Sarah on November 6, 1981, she described being frightened during the visitation with the

father in the motel by an object that looked like a caterpillar and indicated that her father had a "purple stick," that she had seen his penis, and that her father rubbed his penis.

12. During a second interview with Dr. Shapiro on November 11, 1981, the child told him that her vagina had been hurt in the bathtub. She picked up a doll and purple crayon and tried to put it into the doll's mouth, stating that the purple stick had rinsed her tongue and that it had scared her. She also stated that the father had hurt her vagina with a stick. That based on his interviews with Sarah and his observations of her, Dr. Shapiro testified that he believed that the minor child had been sexually molested by the father during the September, 1981 visitation.

13. Between September 4 and September

7, 1981, during the course of his visitation with Sarah Klumpner, Respondent George Klumpner sexually abused said child by inappropriate touching of her genital area and by touching his penis to her mouth.

14. The father also had custody of the minor child in the State of Illinois on September 6, 1982, between the hours of 10:00 a.m. and 8:00 p.m. of that day. On return of the child by the father to the Illinois home of her grandmother, the child's hair was wet and matted and she initially appeared dazed and would not respond to questions. She then began again to react abnormally by running around the room, striking out at those present, banging her head on the furniture and threatening to cut her mother into pieces. Later that evening, while assisting Sarah go to the toilet, the material grandmother, Barbara Kahn, noticed that

Sarah's genital area was red. Sarah prevented her grandmother from "wiping" her, saying that the father had hurt her vagina. The child then asked if her father would go to jail if she told what he had done to her.

15. On the same evening after return from visitation, the child told her mother that her father had inserted his finger into her rectum, put his penis into her mouth, had put her head into his lap while he was not wearing pants, and rubbed her vagina and told her that this would make her feel "hot and good."

16. The child was examined by a pediatrician on September 8, 1982, and it was the opinion of the pediatrician that it was "very questionable" as to whether the hymen was intact. The external genitalia and rectal area did not show any bruising or abrasion. An internal vaginal exam was not

performed.

17. The child was again seen by Dr. Stanley Shapiro, this time on nine occasions between September 13, 1982 and November 18, 1982 Dr. Shapiro reported that the child had told him that the father had put his finger into her rectum, had put his penis into her mouth, and rubbed her vagina. She also told Dr. Shapiro that her father's "purple stick" was his penis. Dr. Shapiro stated his belief that the child was sexually abused by the father in September, 1982.

18. On January 24, 1983, the Illinois Department of Child and Family Services conducted an investigation and concluded, based on said investigation, that there was credible evidence that the father had abused the child.

19. On February 16, 1983, Dale Dowson, supervisor of the family Violence Division of

the Minneapolis Police Department, conducted a videotape interview of the child during the course of which she gave contradictory statements in answer to questions regarding possible sex abuse, but demonstrated through the use of anatomically correct dolls that the father had placed his penis in her mouth. Detective Dowson stated that in his opinion, based upon years of experience, the child had been sexually abused by the father.

20. Dr. Susan Lund and Dr. Jane McNaught, experts in the area of sexual abuse of children, testified that after reviewing Dr. Shapiro's notes, transcripts of prior hearings and tape recordings of the child's statements and the aforementioned videotape, that in their opinion the father had sexually abused the minor child.

21. The validity of the statements by the child regarding sexual abuse is supported

by the age-inappropriate knowledge the child has concerning sexual matters, the relative consistency with which the statements have been repeated to several individuals over a long period of time, the regressive behavior demonstrated by the child following both incidents and the affect of the child while recounting the abuse.

22. On September 6, 1982, Respondent during a visitation with Sarah in the State of Illinois, sexually abused said child by inserting his finger in her rectum, rubbing her vagina and placing his penis into her mouth.

23. That Judith Schermer and Sarah Klumpner are both in need of psychotherapy or other ongoing counseling in order to adequately meet the needs of Sarah Klumpner resulting from the sexual abuse to which she has been subjected.

CONCLUSIONS OF LAW

1. The minor child, Sarah Klumpner is a dependent and neglected child as to her father, George H. Klumpner, within the meaning of Minnesota Statute 260.015, Subd. 6(b) and (d); and Minnesota Statute 260.015, Subd. 10(b), (c), and (d).

2. The minor child, Sarah Klumpner, is dependent with regards to her mother, Judith Schermer, within the meaning of Minnesota Statute 260.015, Subd. 6(b).

ORDER

IT IS HEREBY ORDERED:

1. That the child Sarah Klumpner be adjudicated a dependent and neglected child.

2. That the protective order now in effect be continued and that the father shall be barred from all visitation and contact with said child until further order of this Court.

3. That this matter is scheduled for disposition hearing before this Court on June 5, 1984, at 1:30 p.m., with all parties to submit proposed dispositional plans on that date.

BY THE COURT:

/s/ H. Peter Albrecht
H. Peter Albrecht
Judge of District Court
Juvenile Division

Dated: April 25, 1984.

Let the attached memorandum be made a part of the foregoing Findings of Fact, Conclusions of Law and Order.

MEMORANDUM

All parties to this proceeding agree that based upon the statements she has made over the past two years regarding sexual contact with her father, Sarah Klumpner is a dependent child. The question of whether or not her reports of abuse are correct becomes,

in essence, a question of whether her father is so disturbed an individual that he could have committed the alleged acts or whether her mother is so disturbed that she would have "prompted" Sarah to say these things in order to prevent further visitation. Although respondent raises yet a third possibility of there having been abuse by another individual such as Daniel Schermer, this theory has no support in the evidence presented. The experts who testified raise an additional question of whether or not the mother, or anyone, could prompt a child of Sarah's age to repeatedly make the statements she has made with the age inappropriate accuracy and the affect with which the statements were made.

This Court has concluded that the child could not have been "coached" or "prompted" to such an extent and that she has been

telling the truth. There are some unanswered questions raised by the testimony of George Klumpner and his mother to the effect that there was neither the time nor the opportunity for the second episode to have occurred. In weighing the credibility of the witnesses and considering all of the evidence presented, the Court has essentially discounted this testimony and has believed the child, as corroborated by adult witnesses.

Finally, it is noted that this Court has reached a contrary conclusion to that reached in Illinois shortly after the second episode in September of 1982. While it is argued by respondent that the Illinois court reached its decision while the evidence was still "fresh," the intervening period of time has produced significant differences in the evidence presented at the two hearings,not

the least of which is Dr. Shapiro's testimony regarding what he was able to learn from Sarah after nine sessions with her subsequent to the Illinois hearing. The evidence presented to this Court in February of 1984 is sufficiently convincing under the applicable standard of proof to lead this Court to conclude that Sarah was abused by her father.

H.P.A.

Supreme Court, U.S.
FILED
FEB 5 1990
JOSEPH F. SPANIOL, JR.
CLERK

No. 89-1086

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

SARAH KLUMPNER, a minor, by RICHARD KAHN, her Guardian ad Litem,

Petitioner,

v.

GEORGE H. KLUMPNER,

Respondent.

BRIEF OF RESPONDENT GEORGE H. KLUMPNER IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

WILLIAM J. HARTE
Counsel of Record
WILLIAM J. HARTE, LTD.
111 West Washington Street
Chicago, Illinois 60602
(312) 726-5015

Attorney for Respondent

Photex — 444 North Wabash Avenue — Chicago 60611 — 321-0223

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QUESTION PRESENTED FOR REVIEW

Whether the Illinois Court's determination that a purported Minnesota money judgment was void and not enforceable is a decision which ought to be reviewed by this Court upon a writ of certiorari.

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TABLE OF AUTHORITIES

Supreme Court Rule 17.1 (in pertinent part)

> A review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor.

No. 89-1086

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1989

SARAH KLUMPNER, a minor, by
RICHARD KAHN, her Guardian ad Litem,

Petitioner,

V.

GEORGE H. KLUMPNER,

Respondent.

BRIEF OF RESPONDENT GEORGE H. KLUMPNER IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

STATEMENT OF THE CASE

To date the issues underlying this matter have commanded the attention of at least the following tribunals: (1) the Circuit Court of Lake County, Illinois; (2) the Second District Appellate Court of Illinois; (3) the Supreme Court of Illinois (twice); (4) the Hennepin County, Minnesota, Family Court, Juvenile Court and District Court; (5) the Circuit Court of Cook County, Illinois; (6) the First District Appellate Court of Illinois; and (7) this Court.

This litigation began in August, 1980, when Judith Klumpner ("Judith"), the mother of this minor petitioner, filed a divorce petition in Illinois. After filing the petition, Judith left Illinois with the

couple's infant daughter, Sarah, and denied respondent George Klumpner ("respondent") visitation with his daughter. Judith was later held in contempt for this refusal. (Appendix to Pet., p. 74).

Petitioner's conclusory allegations of impropriety regarding Judge Witt (Pet., p. 18) ought to be disregarded. There was no finding of impropriety nor does the record reveal that the case was transferred from Judge Witt because of impropriety.

Petitioner incorrectly summarizes the order entered by Judge Santi on February 23, 1983, by claiming that it stayed all Illinois proceedings "in favor of the Minnesota Juvenile Court proceedings." In fact, the order continued pending matters generally "until further notice." (Pet., p. 18).

Finally, petitioner (Pet., p. 34) surprisingly asserts that the Illinois Appellate Court was "apparently under the impression" that petitioner was attempting to register a child custody judgment in Illinois, rather than a money judgment. It is clear that the Illinois Appellate Court knew petitioner was attempting to enforce in Illinois a purported tort judgment entered in Minnesota. Petitioner cites the Appellate Court's opinion out of context.

SUMMARY OF ARGUMENT

The Petition for Writ of Certiorari to the Supreme Court of Illinois should be denied because the petition does not set out any special and important reasons that merit this Court's review. In addition, the Illinois decision was correct.

ARGUMENT

I.

PETITIONER HAS NOT SHOWN SUFFICIENT REASON WHY THIS COURT SHOULD GRANT REVIEW ON WRIT OF CERTIORARI.

This litigation began in 1980, as a divorce action brought in Lake County, Illinois. Allegations of child abuse were made by Judith against respondent then in an attempt to obtain the court's approval of her denial of respondent's rights to see and visit with his infant child, then 21 months of age. The child abuse charges were eventually tried and the Illinois trial court ruled against Judith in respondent's favor. The Illinois Appellate Court affirmed. The Illinois Supreme Court denied Judith's petition for leave to appeal. But she kept the litigation pot boiling incessantly, both in Minnesota, where she

had taken the child, and in Illinois. She eventually sought to convince the Illinois courts to enforce a purported judgment she was finally able to obtain in Minnesota against respondent. Her attempt to register the judgment was successful in Illinois at the trial level. But the Illinois Appellate Court reversed and the Illinois Supreme Court denied a petiton for leave to appeal.

Petitioner has not set forth any "special and important" reason, as required by this Court's Rule 17.1, why the Court ought to grant this petition. While of import to respondent and to petitioner, or at least her mother, the moving force behind this litigation, there is no question raised here of sufficient importance to warrant review.

II.

THE ILLINOIS DECISION WAS CORRECT.

The Illinois Appellate Court was correct in holding that the Minnesota Juvenile Court had lacked jurisdiction because the purported exercise of its jurisdiction was in direct contravention of the very purpose for which the Uniform Child Custody Jurisdiction Act ("UCCJA") was enacted. Both Illinois and Minnesota have adopted the UCCJA. In fact, the first attempt by Judith to get a Minnesota court to rule on her charges was turned back precisely because the Minnesota Family Court declined to exercise jurisdiction, citing the UCCJA. Because the Minnesota Juvenile Court lacked jurisdiction, its judgment was void, and in turn the Minnesota judgment rendered in the tort action, which was based on the juvenile court's finding, was also void.

CONCLUSION

For the reasons stated herein, respondent, George H. Klumpner, requests that this Court deny the petition for Writ of Certiorari of Sarah Klumpner, a minor, by Richard Kahn, her Guardian ad Litem.

Respectfully submitted,

WILLIAM J. HARTE
WILLIAM J. HARTE, LTD.
111 West Washington Street
Chicago, IL 60602
(312) 726-5015

Attorney for Respondent